



# Points-Based and Family Immigration

Australia • Austria • Canada • Japan • South Korea  
New Zealand • United Kingdom

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# Comparative Summary

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This report explains the points-based immigration systems adopted by Australia, Austria, Canada, Japan, New Zealand, South Korea, and the United Kingdom (UK). Each of these countries determines a noncitizen's eligibility to obtain a particular visa or residence status partly by whether that noncitizen is able to score above a threshold number of points in accordance with the country's points scoring system.

## **I. Categories of Visas/Residence Status**

All of the countries have points-based immigration system for skilled workers. Other categories for which a points-based immigration system is used include investor, entrepreneur/business start-up, persons with exceptional capabilities, temporary worker, and job seeker.

### **A. Skilled Professionals**

All the countries adopt a points system for certain residence or work visas for skilled professionals (Australia, Austria, Canada, Japan, New Zealand, and the UK) or change of status to long-term residence (South Korea). Some of the countries with skilled worker shortages in certain occupations assign visas for skilled workers (Austria, New Zealand, and the UK).

Points are awarded by education, work experience or career, age, and language skill. Income, a job offer, achievement, a degree from the country, a degree specialized in particular science fields, and a previous managerial position may add more points. Australia counts a partner's skill as well.

### **B. Investor**

Australia, New Zealand, and the UK have adopted a points system for certain investor visas. In general, points are awarded based on age, English-language skills, education, business/investment experience, and financial assets.

### **C. Entrepreneur or Start-Up**

Australia, Austria, New Zealand and South Korea have adopted a points system for an entrepreneur or start-up visa. Investment, registration of a business, or both may be prerequisites for an application. Points may be awarded based on the investment amount, experience, benefits to the country, forecast turnover, business location, and age, among other things. Austria requires the start-up company to develop and launch innovative products, services, processing methods, or technologies. South Korea also requires that the start-up company be in the technology field.

#### **D. Persons with Exceptional Capabilities**

South Korea and the UK accept persons with exceptional capabilities or talents based on points systems. While the UK grants qualified individuals leave to remain for three years, South Korea awards them permanent residency.

#### **E. Temporary Workers**

The UK has adopted a points-based immigration system for six categories of temporary workers, such as Sportspeople, Creative Workers, Charity Workers, Government Authorized Exchange, and Seasonal Workers. To apply for a visa under almost all short-term worker categories, the applicant must have an offer from a qualified sponsor.

#### **F. Youth Mobility Scheme**

Young people of particular countries can work in the UK. People can satisfy the points requirement by proof of age, particular country of origin, and maintenance funds.

#### **G. Job-Seeker**

South Korea applies a points-based system enabling applicants who have earned a Bachelor's degree at a Korean University to obtain status for job-seeking activities in the country. Age, education, work experience, and Korean language ability are counted for the points.

#### **H. Students**

General or child students can satisfy the UK's point requirement by a confirmation of acceptance for studies from a qualified sponsor (school) and proof of maintenance.

### **II. Two-Stage Processes: Australia, Canada, and New Zealand**

Australia, Canada, and New Zealand use two-stage processes. In Canada, an applicant who meets the minimum requirements enters the pool. Once in the pool, Canada's immigration authority uses the Comprehensive Ranking System to rank the applicant's profile. In Australia and New Zealand, applicants who obtain minimum scores and submit an Expression of Interest will be accepted in the pool. If the selection threshold is met, the government sends the individual an invitation to apply for residence.

### **III. Acceptance of Family Members**

All countries accept family members of immigrants who enter the country or acquire a new status through a points-based immigration system, except for job-seeker visa holders in South Korea. Child students and people entering under the Youth Mobility Scheme in the UK are also not allowed to bring dependents. Family members typically include members of a nuclear family. Additionally, Canada and Australia include a dependent child of a dependent child. Japan accepts parents of skilled professionals under very limited conditions. New Zealand offers a limited number of Parent Resident Visas and Parent Retirement Resident Visas.

# Australia

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**SUMMARY** Under Australia’s skilled migration program, points-based systems are currently used in determining eligibility for two provisional visas (the “Business Innovation and Investment” visa and the “Skilled Work Regional” visa), both of which allow holders to subsequently apply for particular permanent residence visas, and two permanent residence visas (the “Skilled Independent” visa and the “Skilled Nominated” visa). The process for these visas involves the submission of an expression of interest (EOI), which includes completion of the relevant points test, and the issuance of an invitation to apply for the visa. Where state or territory nomination is required for a visa, a relevant government agency selects EOIs from the pool based on its own criteria. The points test for three of the above visas is largely the same, with additional points added for required state or territory nominations or family sponsorship, and the “pool” and “pass” marks for the test are established by a legislative instrument. The “Business Innovation and Investment” visa is subject to a different points test under the relevant regulations.

All of the points-based visas allow the primary applicant to include his or her partner and dependent children in the application. In addition, the two provisional visas allow family members to obtain the same visa as “subsequent entrants.” Australian citizens and residents can also sponsor parents, partners, children, and other relatives for visas, each with their own criteria with respect to, for example, age, income or other funds, relationship, and dependencies.

## I. Introduction

Australia’s Immigration and Citizenship Program is administered by the Department of Home Affairs. The immigration program is primarily governed by the Migration Act 1958 (Cth)<sup>1</sup> and Migration Regulations 1994 (Cth).<sup>2</sup> Various additional legislative instruments apply to aspects of the program.<sup>3</sup>

Within the immigration program, the Migration Program has three primary programs: “a Skilled program, a Family program and a Special Eligibility program which are managed within a

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<sup>1</sup> Migration Act 1958 (Cth) (Vol. 1), <https://perma.cc/2WN8-KHK7>.

<sup>2</sup> Migration Regulations 1994 (Cth) (Vol. 1), <https://perma.cc/UL6H-TVQA>, (Vol. 2), <https://perma.cc/W5TB-KA3T>, (Vol. 3), <https://perma.cc/H6C8-72KD>.

<sup>3</sup> See, e.g., *Skilled Migration Program: Legislative Instruments*, Department of Home Affairs, <https://perma.cc/WBR3-FRAA>.

ceiling. The program also includes the Child program which is demand driven and does not have a ceiling.”<sup>4</sup> According to the Department of Homeland Security,

[t]here are a range of visa products in the Skilled program which are designed to improve the productive capacity of the economy and fill shortages in the labour market, including those in regional Australia that cannot be filled by suitable skilled Australians. The majority of the places in the Migration Program are in the Skilled program, currently set at approximately 70 per cent of the program.<sup>5</sup>

For the fiscal year starting July 1, 2019, and ending June 30, 2020, the total places available in the Migration Program are capped at a ceiling of 160,000. Of this number, 108,682 places are allocated to the Skilled program and 47,732 places are allocated to the Family program.<sup>6</sup> The Skilled program is made up of different streams, with different ceilings applied to each. This includes the Employer Sponsored stream, the Skilled Independent stream, the Regional stream, the State/Territory Nominated stream, the Business Innovation and Investment program, the Global Talent stream, and the Distinguished Talent stream.<sup>7</sup>

The Family program “is predominately made up of Partner visas, enabling Australians to reunite with family members from overseas, and provide them with pathways to citizenship.”<sup>8</sup> In addition to the Partner stream, there is a Parent stream and an Other Family stream.<sup>9</sup>

Within the Skilled program, points-based systems are currently used in determining eligibility for the following four visa subclasses:<sup>10</sup> the Business Innovation and Investment (Provisional) visa (subclass 188) (only for the Business Innovation stream and the Investor stream);<sup>11</sup> the Skilled

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<sup>4</sup> Department of Home Affairs, *The Administration of the Immigration and Citizenship Program* 12 (3rd ed., Oct. 2019), <https://perma.cc/37DC-L9K6>.

<sup>5</sup> Id.

<sup>6</sup> *Migration Program Planning Levels*, Department of Home Affairs, <https://perma.cc/L46Q-3DDG>.

<sup>7</sup> Id.

<sup>8</sup> Id.

<sup>9</sup> Id.

<sup>10</sup> See *Points Calculator*, Department of Home Affairs, <https://perma.cc/VDH3-8V68>. One of the visas listed on the site, the Skilled Regional (Provisional) visa (subclass 489) (invited pathway), closed for new applications in November 2019 and is therefore not covered in this report. *Skilled Regional (Provisional) Visa (Subclass 489 (Invited Pathway))*, Department of Home Affairs, <https://perma.cc/C5RZ-D8XB>; *Skilled Migration Program: Recent Changes*, Department of Home Affairs, <https://perma.cc/5HRW-S33U>.

<sup>11</sup> *Business Innovation and Investment (Provisional) Visa (Subclass 188): Business Innovation Stream*, Department of Home Affairs, <https://perma.cc/9WD7-UQT4>; *Business Innovation and Investment (Provisional) Visa (Subclass 188): Investor Stream*, Department of Home Affairs, <https://perma.cc/QL9N-UE7Y>.

Independent visa (subclass 189) (Points Tested stream);<sup>12</sup> the Skilled Nominated visa (subclass 190);<sup>13</sup> and the Skilled Work Regional (Provisional) visa (subclass 491).<sup>14</sup>

A person seeking one of the above visas must submit an expression of interest (EOI) using the Department of Home Affairs's SkillSelect website and then be invited to apply for the relevant visa.<sup>15</sup> For Skilled Independent and Skilled Work Regional (Provisional) visas, "invitations are issued automatically by the SkillSelect system to the highest ranking EOIs, subject to occupational ceilings."<sup>16</sup> For state and territory nominated visas, the person can either nominate a single state or territory, or nominate to be chosen by any state or territory. A relevant government agency in a state or territory "will identify and select skilled workers that they wish to nominate," based on their own criteria, and SkillSelect will then send the person an invitation to apply. Similarly, for Business Innovation and Investment visas, state and territory government agencies will identify and select people they might want to nominate, based on the EOIs.<sup>17</sup> Once a person has been invited to apply for a visa, he or she has 60 days from the date of the invitation in which to apply for the visa.

The Department notes that, after each invitation round, it "will publish the lowest points scoring points test mark that allowed an EOI to be invited," thereby giving an indication of the potential for individuals to receive an invitation in future rounds.<sup>18</sup> There is no charge for submitting an EOI.

Each of the visas are subject to eligibility criteria in addition to the points test. This includes health<sup>19</sup> and character<sup>20</sup> requirements that apply to most visa applicants. In addition, English language requirements apply to all skilled visas, with the required level established as part of the eligibility criteria for each visa.<sup>21</sup> Visa applicants are also required to sign or accept an "Australian values statement" when applying for a visa.<sup>22</sup>

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<sup>12</sup> *Skilled Independent Visa (Subclass 189): Points-Tested Stream*, Department of Home Affairs, <https://perma.cc/RB7L-S5A2>.

<sup>13</sup> *Subclass 190: Skilled Nominated Visa*, Department of Home Affairs, <https://perma.cc/DTA3-F43S>.

<sup>14</sup> *Subclass 491: Skilled Work Regional (Provisional) Visa – Main Applicant*, Department of Home Affairs, <https://perma.cc/S8VM-AW2B>.

<sup>15</sup> *SkillSelect: Make an Expression of Interest*, Department of Home Affairs, <https://perma.cc/RY38-YU4E>.

<sup>16</sup> *Skillselect*, Department of Home Affairs, <https://perma.cc/WNK8-YFD3>.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> See *Meeting Our Requirements: Health*, Department of Home Affairs, <https://perma.cc/FR4K-GTMU>.

<sup>20</sup> See *Meeting Our Requirements: Character Requirements for Visas*, Department of Home Affairs, <https://perma.cc/C59Q-S5RM>.

<sup>21</sup> See *Meeting Our Requirements: English Language*, Department of Home Affairs, <https://perma.cc/Y6TU-TPUT>.

<sup>22</sup> See *Meeting Our Requirements: Australian Values*, Department of Home Affairs, <https://perma.cc/5P57-3QYP>.

Each of the points-based visas listed above make provision for certain family members to be included in a person's application, and the provisional visas also allow family members to subsequently join the visa holder. Eligible family members are referred to as being a "member of a family unit." For visa purposes, this term refers to the main applicant's spouse or de facto partner; and the main applicant's child or their partner's child, provided any child is not engaged, married, or in a de facto relationship and is under 18 years of age, 18 to 23 years of age and dependent on the applicant or their partner, or over 23 years of age and dependent on the applicant or their partner due to a physical or mental disability. A dependent child of any such eligible child can also be considered a member of the family unit.<sup>23</sup>

In addition, there are various visas available to partners, parents, children, and other relatives of Australian citizens and residents.<sup>24</sup>

## II. Points-Based Visas

The use of a points system for certain classes of visas is provided for under part 2, division 3, subdivision 3 of the Migration Act. The Act enables the Minister to set a pool mark (for entry of an EOI into the pool) and a pass mark (for selection of an EOI from the pool).<sup>25</sup> Part 2, division 2.6 of the Migration Regulations sets out the prescribed qualifications for subclass 189, 190, and 491 visas (referred to as "General Skilled Migration Visas"). Schedule 6D of the Regulations contains the points test for these visas, which is reproduced in Appendix II of this report. The current pool and pass mark of 65 points is established by a 2019 legislative instrument.<sup>26</sup>

The use of points tests for certain subclass 188 visa streams is established separately through the Migration Regulations.<sup>27</sup> The points tests for these streams is set out in schedule 7A of the Regulations, which is reproduced in Appendix I of this report. A legislative instrument made in accordance with the Regulations establishes that applicants must score a minimum of 65 points in order to be eligible for this visa.<sup>28</sup>

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<sup>23</sup> Migration Regulations 1994 (Cth) (Vol. 1) reg 1.12.

<sup>24</sup> See generally *Getting a Visa: Visa List – Family and Partner Visas*, Department of Home Affairs, <https://perma.cc/JA9C-L3TW>; *Bringing a Partner or Family*, Department of Home Affairs, <https://perma.cc/FAG8-KAD3>.

<sup>25</sup> Migration Act 1959 (Cth) s 96.

<sup>26</sup> Migration (LIN 19/210: Pool and Pass Marks for General Skilled Migration Visas) Instrument 2019 (Cth) s 6, <https://perma.cc/C5TT-G4RG>.

<sup>27</sup> Migration Regulations 1994 (Cth) sch 2 pt 188.

<sup>28</sup> Migration Regulations 1994 - Specification under Subclauses 188.222(1) and 188.242(1) of Schedule 2 - Points for Business Innovation Stream and Investor Stream of Business Innovation and Investment (Provisional) Visa - June 2012, <https://perma.cc/L85S-EGW5>.

## A. Business Innovation and Investment (Provisional) Visa (Subclass 188)

### 1. General

The subclass 188 visa consists of several streams: Business Innovation stream, Investor stream, Significant Investor stream, Premium Investor stream, and Entrepreneur stream.<sup>29</sup> The first two of these streams are points-tested. Holders of a visa in either stream are able to stay in Australia for up to four years and three months. They may subsequently be eligible for a permanent resident visa, the Business Innovation and Investment (Permanent) visa (subclass 888) (under the Business Innovation stream or Investor stream for this visa).<sup>30</sup>

The subclass 188 Business Innovation stream requires the holder to operate a new or existing business in Australia, while the Investor stream requires an investment of at least AU\$1.5 million (about US\$1.03 million) in an Australian state or territory and the maintenance of business or investment activity in Australia.

To be eligible for this visa under the Business Innovation stream, a person must be nominated by a state or territory government agency after submitting an EOI, and then be invited to apply for the visa. The applicant must meet criteria related to the length of time they have had an ownership stake in one or two businesses with turnover of at least AU\$500,000 (about US\$342,000) per year, and must have personal and business assets of at least AU\$800,000 (about US\$547,500) (alone, together with their partner, or their partner alone). Applicants must have a successful business career, be under 55 years of age, not be involved in unacceptable activities, have functional English, and meet the health and character requirements.<sup>31</sup> He or she must also score at least 65 on the special points test for this visa, which is outlined below.

The eligibility criteria for an Investor stream visa include a state or territory nomination; owning and managing business and personal assets above certain thresholds, including having assets of at least AU\$2.25 million (about US\$1.54 million) and intending to make a designated investment of at least AU\$1.5 million in the nominating state or territory; having at least three years' experience managing one or more qualifying businesses or eligible investments; intending to live in the relevant state or territory; being under 55 years of age; not having a history of involvement in unacceptable activity; having functional English; and meeting the health and character requirements.<sup>32</sup> As for the Business Innovation stream, applicants under the Investor stream must also score at least 65 on the points test.

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<sup>29</sup> *Subclass 188: Business Innovation and Investment (Provisional) Visa*, Department of Home Affairs, <https://perma.cc/5LR4-3L6H>. See also Migration Regulations 1994 (Cth) reg 1202B & sch 2 pt 188.

<sup>30</sup> *Business Innovation and Investment (Provisional) Visa (Subclass 188): Business Innovation Stream – When You Have This Visa*, Department of Home Affairs, <https://perma.cc/F2Q5-5D6K>; *Business Innovation and Investment (Provisional) Visa (Subclass 188): Investor Stream – When You Have This Visa*, Department of Home Affairs, <https://perma.cc/3WUM-KBCB>; *Subclass 888: Business Innovation and Investment (Permanent) Visa*, Department of Home Affairs, <https://perma.cc/7D25-HN7T>.

<sup>31</sup> *Business Innovation and Investment (Provisional) Visa (Subclass 188): Business Innovation Stream – Eligibility*, Department of Home Affairs, <https://perma.cc/WFK5-AQF4>.

<sup>32</sup> *Business Innovation and Investment (Provisional) Visa (Subclass 188): Investor Stream – Eligibility*, Department of Home Affairs, <https://perma.cc/TP7P-F2RG>.

The fee for applying for a subclass 188 visa in either of the two streams starts at AU\$5,375 (about US\$3,680). Additional fees apply for including family members in the application, with a further additional charge payable for any applicant 18 years of age or older who has less than functional English.<sup>33</sup>

## 2. Points Test

Points are awarded based on age, English-language qualifications, educational qualifications, business experience (Business Innovation stream) or investor experience (Investor stream), financial assets, business turnover, business innovation, and a determination by a state or territory government agency that the business proposed by the applicant is “of unique and important benefit” to the relevant jurisdiction.<sup>34</sup>

## 3. Bringing Family Members

Applicants for a subclass 188 visa may include members of the family unit in their application. Family members must meet the standard health and character requirements.<sup>35</sup> In addition, family members who are not included in the original application can apply for a Business Innovation and Investment (Subsequent Entrant) visa in order to join the visa holder.<sup>36</sup>

## B. Skilled Independent Visa (Subclass 189)

### 1. General

The subclass 189 visa allows holders to stay in Australia indefinitely; holders are considered to be Australian permanent residents.<sup>37</sup>

A person must be invited to apply for the visa following his or her submission of an EOI. For the points-tested stream, as part of the EOI process, a person will be given an indicative points score. This score must be greater than 65 in order for the person to be invited to apply for the visa. The

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<sup>33</sup> See *Business Innovation and Investment (Provisional) Visa (Subclass 188): Business Innovation Stream – About This Visa*, Department of Home Affairs, <https://perma.cc/BZG4-VEC2>; *Business Innovation and Investment (Provisional) Visa (Subclass 188): Investor Stream – About This Visa*, Department of Home Affairs, <https://perma.cc/74LS-SEHK>.

<sup>34</sup> See *Points Table for Business Innovation and Investment (Provisional) Visa (Subclass 188)*, Department of Home Affairs, <https://perma.cc/A7GY-8XSG>.

<sup>35</sup> *Business Innovation and Investment (Provisional) Visa (Subclass 188): Business Innovation Stream – About This Visa*, supra note 33; *Business Innovation and Investment (Provisional) Visa (Subclass 188): Investor Stream – About This Visa*, supra note 33.

<sup>36</sup> *Business Innovation and Investment (Provisional) Visa (Subclass 188): Business Innovation Stream – When You Have This Visa*, supra note 30; *Business Innovation and Investment (Provisional) Visa (Subclass 188): Investor Stream – When You Have This Visa*, supra note 30.

<sup>37</sup> *Skilled Independent Visa (Subclass 189): Points-Tested Stream – About This Visa*, Department of Home Affairs, <https://perma.cc/8XGZ-CFJZ>.

subsequent application must include evidence supporting the claims made as part of the points test.<sup>38</sup>

In order to be eligible for this visa, applicants must have an occupation on the relevant skilled occupation list<sup>39</sup> and submit a suitable skills assessment for the occupation from a skill assessing authority.<sup>40</sup> They must also be under 45 years of age, have at least competent English, and meet the health and character requirements.

The fee for applying for this visa starts at AU\$4,045 (about US\$2,770). There are additional fees for each family member included in the application, with a further charge added if any family member 18 years of age or older has less than functional English.<sup>41</sup>

## 2. *Points Test*

Points are awarded based on a person's age, English language skills, skilled employment experience within and outside Australia, educational qualifications, study or a "professional year" in Australia, study in regional Australia, holding a qualification in a credentialed community language, and partner skills (including points for being single or having a partner who is an Australian citizen or permanent resident).<sup>42</sup>

## 3. *Bringing Family Members*

The main applicant for a subclass 189 visa may include members of his or her family unit in the application. Each family member must meet the health and character requirements.<sup>43</sup> In addition, as an Australian permanent resident, holders of this visa may be able to sponsor eligible family to come to Australia.<sup>44</sup>

## C. **Skilled Nominated Visa (Subclass 190)**

### 1. *General*

This visa is similar to the subclass 189 visa in terms of eligibility requirements and the status of holders, but has the additional requirement of being nominated by an Australian state or territory

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<sup>38</sup> *Skilled Independent Visa (Subclass 189): Points-Tested Stream – Eligibility*, Department of Home Affairs, <https://perma.cc/6MSL-5GMJ>. See also Migration Regulations 1994 (Cth) (Vols. 1 & 2) sch 1 reg 1137 & sch 2 pt 189.

<sup>39</sup> *Skilled Occupation List*, Department of Home Affairs, <https://perma.cc/WN68-X42Q>.

<sup>40</sup> *Skills Assessment*, Department of Home Affairs, <https://perma.cc/2F32-W3QC>.

<sup>41</sup> See *Skilled Independent Visa (Subclass 189): Points-Tested Stream – About This Visa*, supra note 37.

<sup>42</sup> *Points Table for Skilled Independent Visa (Subclass 189)*, Department of Home Affairs, <https://perma.cc/DDC6-TXCQ>.

<sup>43</sup> *Skilled Independent Visa (Subclass 189): Points-Tested Stream – About This Visa*, supra note 37.

<sup>44</sup> *Skilled Independent Visa (Subclass 189): Points-Tested Stream – When You Have This Visa*, Department of Home Affairs, <https://perma.cc/MR8E-V7FS>.

government agency following a person's submission of an EOI.<sup>45</sup> As with the subclass 189 visa, an EOI can only be selected if it shows an indicative score of at least 65 in the points test.<sup>46</sup> The fees for this visa are the same as those for the subclass 189 visa.

## 2. *Points*

The points test for the subclass 190 visa is the same as that for the subclass 189 visa, but with an additional five points awarded during the application process for the required nomination by a state or territory government agency.<sup>47</sup>

## 3. *Bringing Family Members*

As with the subclass 189 visa, the main applicant for a subclass 190 visa may include members of his or her family unit in the application and holders of this visa may be able to sponsor relatives to come to Australia.<sup>48</sup>

# D. Skilled Work Regional (Provisional) Visa (Subclass 491)

## 1. *General*

The subclass 491 visa is a new visa that opened for applications in November 2019.<sup>49</sup> It allows holders to live, work, and study in a designated regional area of Australia for five years.<sup>50</sup> It also provides holders with a pathway to permanent residence in Australia, provided they can show that they have lived and worked in regional Australia while holding the visa. They can then apply for a Permanent Residence (Skilled Regional) visa (subclass 191), which will be available starting November 2022.<sup>51</sup>

The eligibility criteria for this visa are similar to subclass 189 and 190 visas in terms of skilled occupations and assessments, age (45 or under), English language skills, and obtaining over 65 points on the points test.<sup>52</sup> In order to be invited to apply for a subclass 491 visa, a person must

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<sup>45</sup> *Subclass 190: Skilled Nominated Visa – Eligibility*, Department of Home Affairs, <https://perma.cc/8PPV-ZW25>. See also Migration Regulations 1994 (Cth) (Vol. 1) sch 1 reg 1138.

<sup>46</sup> *Subclass 190: Skilled Nominated Visa – Eligibility*, *supra* note 45.

<sup>47</sup> *Points Table for Skilled Nominated Visa (Subclass 190)*, Department of Home Affairs, <https://perma.cc/FSU5-QX3K>.

<sup>48</sup> *Subclass 190: Skilled Nominated Visa – When You Have This Visa*, Department of Home Affairs, <https://perma.cc/HY8M-UML8>.

<sup>49</sup> See *Regional Migration*, Department of Home Affairs, <https://perma.cc/GW4E-GQXT>; Migration Amendment (New Skilled Regional Visas) Regulations 2019 (Cth), <https://perma.cc/RZY5-E54T>.

<sup>50</sup> *Subclass 491: Skilled Work Regional (Provisional) Visa – Main Applicant*, *supra* note 14.

<sup>51</sup> *Subclass 491: Skilled Work Regional (Provisional) Visa – Main Applicant – When You Have This Visa*, Department of Home Affairs, <https://perma.cc/X7RH-623X>; *Permanent Residence (Skilled Regional Visa) Visa (Subclass 191)*, Department of Home Affairs, <https://perma.cc/EY5N-6Y8A>.

<sup>52</sup> *Subclass 491: Skilled Work Regional (Provisional) Visa – Main Applicant – Eligibility*, Department of Home Affairs, <https://perma.cc/PP5S-RXPk>.

either be nominated by a state or territory government agency following the submission of an EOI, or be sponsored by an eligible relative. A sponsor must be

- 18 years old or older
- usually resident in a designated area of Australia
- be an Australian citizen, an Australian permanent resident, or an eligible New Zealand citizen
- be your or your partner's eligible relative<sup>53</sup>

Eligible relatives include

- a parent
- a child or step-child
- a brother, sister, adoptive brother, adoptive sister, step-brother or step-sister
- an aunt, uncle, adoptive aunt, adoptive uncle, step-aunt or step-uncle
- a nephew, niece, adoptive nephew, adoptive niece, step-nephew or step-niece
- a grandparent, or
- a first cousin<sup>54</sup>

If a person indicates on his or her EOI that he or she will be sponsored by an eligible relative, the Department of Home Affairs may invite the person to apply for the visa. The Department must approve the sponsorship before a visa can be granted.<sup>55</sup>

The fees for this visa are the same as those for the subclass 189 visa.

## 2. *Points Test*

The points test for the subclass 491 visa is essentially the same as for the subclass 190 visa. However, additional points (15, rather than 5) are awarded for either a nomination by a state or territory government agency, or sponsorship by a family member.<sup>56</sup>

## 3. *Bringing Family Members*

An applicant for a subclass 491 visa may include members of his or her family unit in the application.<sup>57</sup> In addition, a member of the family unit of a subclass 491 visa holder may apply for the visa as a "subsequent entrant" and include additional family unit members in his or her

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<sup>53</sup> Id.

<sup>54</sup> Id.

<sup>55</sup> Id.

<sup>56</sup> *Points Table for Skilled Work Regional (Provisional) Visa (Subclass 491)*, Department of Home Affairs, <https://perma.cc/L5ZU-VU8W>.

<sup>57</sup> *Subclass 491: Skilled Work Regional (Provisional) Visa – Main Applicant – About This Visa*, Department of Home Affairs, <https://perma.cc/P9Z8-CZJR>.

application.<sup>58</sup> Such family members do not need to submit an EOI or pass the points test.<sup>59</sup> A subsequent entrant visa will be valid until the original holder's visa ends. Subsequent entrants are also able to qualify for a subclass 191 permanent resident visa.<sup>60</sup>

### III. Visas for Family Members

In addition to the ability of skilled and business/investor visa applicants to include family members in their applications, and for family members of provisional visa holders to subsequently obtain the same visa, there are a range of separate visas available to family members of Australian citizens and permanent residents.

Australian citizens and holders of a permanent resident visa (such as subclass 189, 190, 191, and 888 visas) may, for example, sponsor the following family members for visas under various subclasses (some of which depend on whether the family member is inside or outside Australia at the time the application is made):<sup>61</sup>

- A partner for a provisional visa and permanent visa (subclasses 100, 309, 801 and 820)<sup>62</sup>
- An "Aged Dependent Relative" for a permanent visa (subclasses 114 and 838)<sup>63</sup>
- A "Remaining Relative" (subclasses 115 and 835)<sup>64</sup> or "Orphan Relative" (subclasses 117 and 837)<sup>65</sup> for a permanent visa
- A family member for a permanent Carer visa (subclasses 116 and 836)<sup>66</sup>

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<sup>58</sup> *Subclass 491: Skilled Work Regional (Provisional) Visa – Subsequent Entrant – About This Visa*, Department of Home Affairs, <https://perma.cc/572M-6TW8>.

<sup>59</sup> *Subclass 491: Skilled Work Regional (Provisional) Visa – Subsequent Entrant – Eligibility*, Department of Home Affairs, <https://perma.cc/9K89-W87Z>.

<sup>60</sup> *Subclass 491: Skilled Work Regional (Provisional) Visa – Subsequent Entrant – When You Have This Visa*, Department of Home Affairs, <https://perma.cc/3DFW-HCC5>.

<sup>61</sup> See generally *Getting a Visa: Visa List – Family and Partner Visas*, *supra* note 24.

<sup>62</sup> *Subclasses 309 and 100: Partner Visa (Apply Overseas)*, Department of Home Affairs, <https://perma.cc/7QPX-8RCW>; *Subclasses 820 and 801: Partner Visa (Apply in Australia)*, Department of Home Affairs, <https://perma.cc/H799-TRVK>.

<sup>63</sup> *Subclass 114: Aged Dependent Relative Visa*, Department of Home Affairs, <https://perma.cc/A8RV-493Q>; *Subclass 838: Aged Dependent Relative Visa*, Department of Home Affairs, <https://perma.cc/YQ6A-GS6F>.

<sup>64</sup> *Subclass 115: Remaining Relative Visa*, Department of Home Affairs, <https://perma.cc/Z8VD-VC9P>; *Subclass 835: Remaining Relative Visa*, Department of Home Affairs, <https://perma.cc/7TEX-D63T>.

<sup>65</sup> *Subclass 117: Orphan Relative Visa*, Department of Home Affairs, <https://perma.cc/3QWD-DAEF>; *Subclass 837: Orphan Relative Visa*, Department of Home Affairs, <https://perma.cc/4GX5-CKPW>.

<sup>66</sup> *Subclass 116: Carer Visa*, Department of Home Affairs, <https://perma.cc/5ZCL-6NN8>; *Subclass 836: Carer Visa*, Department of Home Affairs, <https://perma.cc/5FKT-2ZMN>.

- A parent or aged parent (subclasses 103 and 804),<sup>67</sup> or a “contributory” parent or aged parent (subclasses 143 and 864),<sup>68</sup> for a permanent visa
- A contributory parent for a temporary visa to enable him or her to live in Australia for two years (subclasses 173 and 884),<sup>69</sup> or a parent to live in Australia for three to five years (extendable up to 10 years) if certain sponsorship criteria are met (subclass 870)<sup>70</sup>
- A dependent child (subclasses 101 and 802)<sup>71</sup> or adopted child (subclass 102)<sup>72</sup> for a permanent visa

The Department of Home Affairs indicates that the Aged Dependent Relative (subclasses 144 and 838) and Remaining Relative (subclasses 115 and 835) visas have long wait times of up to 50 years. The Parent visa (subclass 103) has wait times of up to 30 years, while the Aged Parent visa (subclass 804) has “long waiting times.”<sup>73</sup>

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<sup>67</sup> Subclass 103: *Parent Visa*, Department of Home Affairs, <https://perma.cc/YKZ7-S7N3>; Subclass 804: *Aged Parent Visa*, Department of Home Affairs, <https://perma.cc/T3PF-ZFZF>.

<sup>68</sup> Subclass 143: *Contributory Parent Visa*, Department of Home Affairs, <https://perma.cc/QPS9-H4PS>; Subclass 864: *Contributory Aged Parent Visa*, Department of Home Affairs, <https://perma.cc/34K9-B7ZR>.

<sup>69</sup> Subclass 173: *Contributory Parent (Temporary) Visa*, Department of Home Affairs, <https://perma.cc/ay2X-LHDQ>; Subclass 884: *Contributory Aged Parent (Temporary) Visa*, Department of Home Affairs, <https://perma.cc/N8YQ-3BR4>.

<sup>70</sup> Subclass 870: *Sponsored Parent (Temporary) Visa*, Department of Home Affairs, <https://perma.cc/888Q-D8SN>.

<sup>71</sup> Subclass 101: *Child Visa*, Department of Home Affairs, <https://perma.cc/D5JR-YUFF>; Subclass 802: *Child Visa*, Department of Home Affairs, <https://perma.cc/5YB3-H6Z2>.

<sup>72</sup> Subclass 102: *Adoption Visa*, Department of Home Affairs, <https://perma.cc/JSV7-BKMT>.

<sup>73</sup> *Explore Visa Options for Joining Family in Australia*, Department of Home Affairs, <https://perma.cc/NN4X-376T> (click link for “37 visa(s)”).

## Appendix I: Points Test for Subclass 188 Visa

### Part 7A.2—Age qualifications

Item	At the time of invitation to apply for the visa, the applicant was ...	Number of points
7A21	not less than 18 and under 25	20
7A22	not less than 25 and under 33	30
7A23	not less than 33 and under 40	25
7A24	not less than 40 and under 45	20
7A25	not less than 45 and under 55	15

### Part 7A.3—English language qualifications

Item	At the time of invitation to apply for the visa, the applicant had ...	Number of points
7A31	vocational English	5
7A32	proficient English	10

Note: Points are accumulated under item 7A31 or 7A32, not both.

### Part 7A.4—Educational qualifications

Item	At the time of invitation to apply for the visa, the applicant had ...	Number of points
7A41	met the requirements for: (a) the award of a trade qualification, diploma or bachelor degree by an Australian educational institution; or (b) the award of a bachelor qualification by an educational institution that is of a recognised standard	5
7A42	met the requirements for: (a) the award of a bachelor degree in business, science or technology by an Australian educational institution; or (b) the award of a bachelor qualification in business, science or technology by an educational institution that is of a recognised standard	10

Note: Points are accumulated under item 7A41 or 7A42, not both.

## Part 7A.5—Business experience qualifications—Business Innovation stream only

Item	The applicant has held one or more main businesses for ...	Number of points
7A51	not less than 4 years in the 5 years immediately before the time of invitation to apply for the visa	10
7A52	not less than 7 years in the 8 years immediately before the time of invitation to apply for the visa	15

Note: Points are accumulated under item 7A51 or 7A52, not both.

## Part 7A.6—Investor experience qualifications—Investor stream only

Item	The applicant ...	Number of points
7A61	held eligible investments which had a value of not less than AUD100 000 for not less than 4 years immediately before the time of invitation to apply for the visa	10
7A62	held eligible investments which had a value of not less than AUD100 000 for not less than 7 years immediately before the time of invitation to apply for the visa	15

Note: Points are accumulated under item 7A61 or 7A62, not both.

## Part 7A.7—Financial asset qualifications

Item	The net value of the business and personal assets of the applicant, the applicant's spouse or de facto partner, or the applicant and his or her spouse or de facto partner together, was ...	Number of points
7A71	not less than AUD800 000 in each of the 2 fiscal years immediately before the time of invitation to apply for the visa	5
7A72	not less than AUD1 300 000 in each of the 2 fiscal years immediately before the time of invitation to apply for the visa	15
7A73	not less than AUD1 800 000 in each of the 2 fiscal years immediately before the time of invitation to apply for the visa	25
7A74	not less than AUD2 250 000 in each of the 2 fiscal years immediately before the time of invitation to apply for the visa	35

Note: Points are accumulated under one item in Part 7A.7, not more than one.

## Part 7A.8—Business turnover qualifications

Item	The applicant had an ownership interest in one or more main businesses that had an annual turnover of ...	Number of points
7A81	not less than AUD500 000 in at least 2 of the 4 fiscal years immediately before the time of invitation to apply for the visa	5
7A82	not less than AUD1 000 000 in at least 2 of the 4 fiscal years immediately before the time of invitation to apply for the visa	15
7A83	not less than AUD1 500 000 in at least 2 of the 4 fiscal years immediately before the time of invitation to apply for the visa	25
7A84	not less than AUD2 000 000 in at least 2 of the 4 fiscal years immediately before the time of invitation to apply for the visa	35

Note: Points are accumulated under one item in Part 7A.8, not more than one.

## Part 7A.9—Business innovation qualifications

Item	At the time of invitation to apply for the visa ...	Number of points
7A91	the applicant, or a main business of the applicant, had either or both of the following: (a) one or more patents that: (i) were registered not less than 1 year before that time; and (ii) were used in the day to day activities of the main business; (b) one or more registered designs that: (i) were registered not less than 1 year before that time; and (ii) were used in the day to day activities of the main business	15
7A92	the applicant, or a main business of the applicant, had one or more registered trade marks that: (a) were registered not less than 1 year before that time; and (b) were used in the day to day activities of the main business	10
7A93	each of the following applied: (a) at least one main business in which the applicant held an ownership interest operated in accordance with a formal joint venture agreement entered into with another business or businesses; (b) the joint venture agreement had been entered into not less than 1 year before the time of invitation to apply for the visa; (c) the applicant utilised his or her skills in actively participating at a senior level in the day to day management of the business	5
7A94	at least one main business held by the applicant derived not less than 50% of its annual turnover from export trade in at least 2 of the 4 fiscal years immediately before that time	15
7A95	the applicant had an ownership interest in at least one main business that: (a) was established not more than 5 years before that time; and (b) had an average annualised growth in turnover that was greater than 20% per annum over 3 continuous fiscal years; and (c) in at least one of the 3 fiscal years mentioned in paragraph (b) employed 10 or more employees for a total number of hours that was at least the total number of hours that would have been worked by 10 full-time employees	10

<b>Item</b>	<b>At the time of invitation to apply for the visa ...</b>	<b>Number of points</b>
7A96	<p>the applicant, or at least one main business in which the applicant held an ownership interest:</p> <p>(a) had received a grant that:</p> <p style="padding-left: 2em;">(i) was awarded for the purposes of early phase start up of a business, product commercialisation, business development or business expansion; and</p> <p style="padding-left: 2em;">(ii) was at least AUD10 000; and</p> <p style="padding-left: 2em;">(iii) was awarded by a government body in the applicant's home country; and</p> <p style="padding-left: 2em;">(iv) had been received not more than 4 years immediately before that time; or</p> <p>(b) had received venture capital funding of at least AUD100 000 not more than 4 years before the time of the invitation for the purposes of early phase start up of a business, product commercialisation, business development or business expansion</p>	10

Note: Points may be accumulated under more than one item in Part 7A.9, but points may not be accumulated more than once for each item in the Part.

## **Part 7A.10—Special endorsement qualifications**

<b>Item</b>	<b>At the time of the invitation to apply for the visa ...</b>	<b>Number of points</b>
7A101	the nominating State or Territory government agency had determined that the business proposed by the applicant was of unique and important benefit to the State or Territory where the nominating government agency is located	10

*Source:* Migration Regulations 1994 (Cth) (Vol. 3) sch 7A (Business innovation and investment points test – attributes and points (Business Skills (Provisional) (Class EB) visas)), <https://perma.cc/H6C8-72KD>.

## Appendix II: Points Test for Subclass 189, 190, and 491 Visas

**Part 6D.1—Age qualifications**

<b>Item</b>	<b>At the time of invitation to apply for the visa, the applicant's age was ...</b>	<b>Number of points</b>
6D11	not less than 18 and under 25	25
6D12	not less than 25 and under 33	30
6D13	not less than 33 and under 40	25
6D14	not less than 40 and under 45	15

**Part 6D.2—English language qualifications**

<b>Item</b>	<b>At the time of invitation to apply for the visa, the applicant had ...</b>	<b>Number of points</b>
6D21	superior English	20
6D22	proficient English	10

**Part 6D.3—Overseas employment experience qualifications**

<b>Item</b>	<b>At the time of invitation to apply for the visa, the applicant ...</b>	<b>Number of points</b>
6D31	had been employed outside Australia in: (a) the applicant's nominated skilled occupation; or (b) a closely related skilled occupation; for a period totalling at least 36 months in the 10 years immediately before that time	5
6D32	had been employed outside Australia in: (a) the applicant's nominated skilled occupation; or (b) a closely related skilled occupation; for a period totalling at least 60 months in the 10 years immediately before that time	10
6D33	had been employed outside Australia in: (a) the applicant's nominated skilled occupation; or (b) a closely related skilled occupation; for a period totalling at least 96 months in the 10 years immediately before that time	15

## Part 6D.4—Australian employment experience qualifications

Item	At the time of invitation to apply for the visa, the applicant ...	Number of points
6D41	had been employed in Australia in: (a) the applicant's nominated skilled occupation; or (b) a closely related skilled occupation; for a period totalling at least 12 months in the 10 years immediately before that time	5
6D42	had been employed in Australia in: (a) the applicant's nominated skilled occupation; or (b) a closely related skilled occupation; for a period totalling at least 36 months in the 10 years immediately before that time	10
6D43	had been employed in Australia in: (a) the applicant's nominated skilled occupation; or (b) a closely related skilled occupation; for a period totalling at least 60 months in the 10 years immediately before that time	15
6D44	had been employed in Australia in: (a) the applicant's nominated skilled occupation; or (b) a closely related skilled occupation; for a period totalling at least 96 months in the 10 years immediately before that time	20

## Part 6D.5—Aggregating points for employment experience qualifications

- 6D51 (1) If an applicant has a qualification mentioned in Part 6D.3 and a qualification mentioned in Part 6D.4, and the combined number of points that would be awarded under those Parts for the qualifications is more than 20 points:
- the Minister must give the applicant 20 points under this Part for the qualifications; and
  - no points are given under Part 6D.3 or 6D.4.
- (2) The prescribed number of points for the combination of qualifications is 20.

## Part 6D.6—Australian professional year qualifications

Item	At the time of invitation to apply for the visa, the applicant had completed ...	Number of points
6D61	a professional year in Australia in: (a) the applicant's nominated skilled occupation; or (b) a closely related skilled occupation;	5

<b>Item</b>	<b>At the time of invitation to apply for the visa, the applicant had completed ...</b>	<b>Number of points</b>
	for a period totalling at least 12 months in the 48 months immediately before that time	

### **Part 6D.7—Educational qualifications**

<b>Item</b>	<b>At the time of invitation to apply for the visa, the applicant had ...</b>	<b>Number of points</b>
6D71	met the requirements for: (a) the award of a doctorate by an Australian educational institution; or (b) the award of a doctorate, by another educational institution, that is of a recognised standard	20
6D72	met the requirements for: (a) the award of at least a bachelor degree by an Australian educational institution; or (b) the award of at least a bachelor qualification, by another educational institution, that is of a recognised standard	15
6D73	met the requirements for the award of a diploma by an Australian educational institution	10
6D74	met the requirements for the award of a trade qualification by an Australian educational institution	10
6D75	attained a qualification or award recognised by the relevant assessing authority for the applicant's nominated skilled occupation as being suitable for the occupation	10

### **Part 6D.7A—Specialist educational qualifications**

<b>Item</b>	<b>At the time of invitation to apply for the visa ...</b>	<b>Number of points</b>
6D7A1	the applicant met the requirements for the award of a specialist educational qualification	10

### **Part 6D.8—Australian study qualifications**

<b>Item</b>	<b>At the time of invitation to apply for the visa ...</b>	<b>Number of points</b>
6D81	the applicant met the Australian study requirement	5

## Part 6D.9—Credentialled community language qualifications

Item	At the time of invitation to apply for the visa, the applicant had ...	Number of points
6D91	a qualification in a particular language: (a) awarded or accredited by a body specified by the Minister in an instrument in writing for this item; and (b) at a standard for the language specified in the instrument	5

## Part 6D.10—Study in designated regional area qualification

Item	At the time of invitation to apply for the visa ...	Number of points
6D101	each of the following applied: (a) the applicant met the Australian study requirement; (b) the location of the campus or campuses at which that study was undertaken is in a designated regional area; (c) while the applicant undertook the course of study the applicant lived in a designated regional area; (d) none of the study undertaken constituted distance education	5

## Part 6D.11—Partner qualifications

Item	Qualification	Number of points
6D111	The spouse or de facto partner of the applicant (the <i>primary applicant</i> ): (a) is an applicant for the same subclass of visa as the primary applicant; and (b) is not an Australian permanent resident or an Australian citizen; and (c) was under 45 at the time the invitation to apply for the visa was issued to the primary applicant; and (d) at the time of invitation to apply for the visa, nominated a skilled occupation, being an occupation specified by the Minister under paragraph 1.15I(1)(a) at that time; and (e) at the time of invitation to apply for the visa, had been assessed by the relevant assessing authority for the nominated skilled occupation as having suitable skills for the occupation and the assessment was not for a Subclass 485 (Temporary Graduate) visa; and (f) at the time of invitation to apply for the visa, had competent English	10
6D112	Either: (a) the applicant does not have a spouse or de facto partner; or (b) the applicant has a spouse or de facto partner who is an Australian permanent resident or an Australian citizen	10
6D113	The spouse or de facto partner of the applicant (the <i>primary applicant</i> ): (a) is an applicant for the same subclass of visa as the primary applicant; and	5

Item	Qualification	Number of points
	(b) is not an Australian permanent resident or an Australian citizen; and (c) at the time of invitation to apply for the visa, had competent English	

### Part 6D.12—State or Territory nomination qualifications

Item	Qualification	Number of points
6D121	The applicant has been invited to apply for a Subclass 190 (Skilled—Nominated) visa, and the nominating State or Territory government agency has not withdrawn the nomination	5

### Part 6D.13—Designated regional area nomination or sponsorship qualifications

Item	Qualification	Number of points
6D131	The applicant has been invited to apply for a Subclass 489 (Skilled—Regional) (Provisional) visa or a Subclass 491 (Skilled Work Regional (Provisional)) visa, and: (a) the nominating State or Territory government agency has not withdrawn the nomination; or (b) if the applicant is sponsored by a family member, the Minister has accepted the sponsorship	15

*Source:* Migration Regulations 1994 (Cth) (Vol. 3) sch 6D (General points test for General Skilled Migration visas mentioned in subregulation 2.26AC(1)), <https://perma.cc/H6C8-72KD>.

# Austria

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**SUMMARY** In general, every third-country national who intends to stay in Austria for more than six months must obtain a residence permit. The relevant rules are codified in the Austrian Settlement and Residence Act and the Aliens Employment Act. A points-based system is in place for the majority of the permanent residence titles for skilled workers (Red-White-Red Card). There are no caps in place for the numbers that can be granted each year. In order to receive a Red-White-Red Card, the applicant must achieve the required amount of points for the category of residence permit that he or she is applying for and fulfill additional general and special requirements. Red-White-Red Cards are available to very highly skilled workers, skilled workers in occupations with a shortage, other key workers, graduates of Austrian universities and colleges of higher education, self-employed key workers, and start-up founders.

Family members of Red-White-Red Card holders are eligible for a Red-White-Red Card Plus, if they fulfill the general requirements for a residence title set out in the Settlement and Residence Act.

## I. General Overview

The Austrian Settlement and Residence Act sets out the general requirements for the approval, denial, and withdrawal of residence titles for foreigners who stay or intend to stay in Austria for more than six months, as well as residence rights according to European Union (EU) law and for third-country nationals with a Mobile Intra-Corporate Transfer (ICT) Card from a different EU Member State.<sup>1</sup> The Aliens Employment Act regulates the employment of foreigners in Austria.<sup>2</sup> Foreigners are defined as persons who do not possess Austrian citizenship, whereas third-country nationals are individuals who are neither citizens from the European Economic Area (EEA)<sup>3</sup> nor Switzerland.<sup>4</sup> Different residence titles are provided depending on the purpose of residence. The Settlement and Residence Act is generally administered by the Federal Ministry of the Interior, whereas the Aliens Employment Act is generally administered by the Federal Ministry of Labor, Social Affairs, Health, and Consumer Protection.<sup>5</sup>

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<sup>1</sup> Bundesgesetz über die Niederlassung und den Aufenthalt in Österreich [Niederlassungs- und Aufenthaltsgesetz] [NAG], BGBl. I No. 100/2005, § 1, para. 1 & §§ 41 et seq., <https://perma.cc/93GG-K5GR>.

<sup>2</sup> Ausländerbeschäftigungsgesetz [AuslBG], BGBl. I No. 218/1975, § 1, para. 1, <https://perma.cc/M7AH-VZVP>.

<sup>3</sup> The EEA comprises the EU countries and Norway, Liechtenstein, and Iceland.

<sup>4</sup> NAG, § 2, para. 1, nos. 1 & 6; AuslBG, § 2, para. 1.

<sup>5</sup> NAG, § 83, AuslBG, § 35.

As an exception, the requirements for a residence title based on asylum status or other grounds deserving special consideration are codified in the Asylum Act 2005,<sup>6</sup> which is administered by the Austrian Federal Office for Immigration Matters and Asylum.<sup>7</sup>

## II. Permanent Migration

The Settlement and Residence Act differentiates between permanent migration and temporary migration. A points-based system is in place for the majority of the permanent residence titles for (highly) skilled workers (Red-White-Red Card).<sup>8</sup> There are no caps in place for the numbers that can be granted each year. In order to receive a Red-White-Red Card, the applicant must achieve the required amount of points for the category of residence permit that he or she is applying for and fulfill additional requirements. Points are awarded for education, professional experience, age, and language skills (German and English).<sup>9</sup> The points awarded for these factors and the maximum number of points that can be scored vary depending on the type of residence permit the person is applying for. The Austrian Public Employment Service (Arbeitsmarktservice, AMS) evaluates the applications and submitted documents, and awards points.<sup>10</sup>

The Red-White-Red Card was created when the Settlement and Residence Act and the Aliens Employment Act were amended and has been available since July 2011. It is only available to third-country nationals. In addition, there are a limited number of settlement permits available for certain groups of people,<sup>11</sup> for example people with “distinguished talent,” such as artists and researchers,<sup>12</sup> or pensioners and financially independent individuals.<sup>13</sup> Those settlement permits are not subject to the points system. The settlement permits for pensioners and financially independent individuals are limited to a certain quota each year.<sup>14</sup> For the year 2019, there were 445 total available.<sup>15</sup>

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<sup>6</sup> Bundesgesetz über die Gewährung von Asyl [Asylgesetz 2005] [AsylG 2005], BGBl. I No. 100/2005, § 1, <https://perma.cc/3FSW-GUUM> (original), <https://perma.cc/28NX-N64N> (English translation, updated through Jan. 1, 2019).

<sup>7</sup> Bundesgesetz über die Einrichtung und Organisation des Bundesamtes für Fremdenwesen und Asyl [BFA-Einrichtungsgesetz] [BFA-G], BGBl. I No. 87/2012 § 3, para. 1, no. 2, <https://perma.cc/BP9B-DTXZ>.

<sup>8</sup> NAG, § 41.

<sup>9</sup> AuslBG, annexes A-D.

<sup>10</sup> Id. §§ 20c, 20d.

<sup>11</sup> NAG, §§ 43-44a.

<sup>12</sup> Id. §§ 43a, 43c.

<sup>13</sup> Id. § 44.

<sup>14</sup> Id. § 13 in conjunction with Verordnung der Bundesregierung, mit der die Anzahl der quotenpflichtigen Aufenthaltstitel und die Höchstzahlen der Beschäftigungsbewilligungen für befristet beschäftigte Fremde und Erntehelfer für das Jahr 2019 festgelegt werden [Niederlassungsverordnung 2019] [NLV 2019], BGBl. II No. 29/2019, § 3, <https://perma.cc/HG9Y-L2SG>.

<sup>15</sup> NLV 2019, § 3. Their number of settlement permits for this category varies among the Austrian states.

Red-White-Red Cards are awarded to the following groups of third-country nationals who meet the general requirements for a residence title set out in the first part of the Settlement and Residence Act and additional specific requirements set out in the Aliens Employment Act:

- Very highly skilled workers
- Skilled workers in occupations with a shortage
- Other key workers
- Graduates of Austrian universities and colleges of higher education
- Self-employed key workers
- Start-up founders<sup>16</sup>

#### **A. General Requirements**

The general requirements are that

- the residence of the foreigner does not contravene public interests (public order and safety);
- evidence shows locally customary accommodation;
- evidence shows health insurance covering all risks;
- evidence shows adequate means of subsistence so that the regional and local authorities are not financially burdened; and
- granting a residence title will not significantly impact the relationships of Austria with other countries or subjects of international law.<sup>17</sup>

#### **B. Special Requirements**

##### *1. Very Highly Skilled Workers*

Very highly skilled workers may either apply for a six-month visa to look for a job in Austria and then apply for a Red-White-Red Card once they have found a job during that time, or apply for a Red-White-Red Card right away if they already have a firm job offer.<sup>18</sup> Very highly skilled workers must score a minimum of 70 out of 100 points according to the list of criteria set out in Annex A of the Aliens Employment Act. Highly skilled workers are awarded points for a university education of at least four years, for specializing in STEM disciplines, habilitations or PhDs, previous jobs in a managerial position for a company listed at the stock exchange with a yearly salary of more than €50,000 (about US\$55,712), patents or publications, and awards.<sup>19</sup>

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<sup>16</sup> NAG, § 41 in conjunction with AuslBG, §§ 12, 12a, 12b.

<sup>17</sup> NAG, § 11, para. 2.

<sup>18</sup> AuslBG, §§ 20c, 20d.

<sup>19</sup> Id. annex A, Besondere Qualifikationen bzw. Fähigkeiten.

As an exception, the Federal Minister for Labor, Social Affairs, Health, and Consumer Protection, in agreement with the Federal Minister for Digital and Economic Affairs, may designate certain occupations/graduate degrees for which a total of 65 instead of 70 points is sufficient to apply if there is a continuous urgent demand for workers in those areas.<sup>20</sup>

For 2020, 65 points are sufficient to apply for the following positions:

- Graduate in mechanical engineering
- Graduate in power engineering
- Graduate engineer for data processing
- Graduate in weak-current and telecommunications engineering
- Graduate engineer (special professions)
- Graduate in business administration
- Social scientist, economist, scientific statistician
- Economic trustee
- Physician<sup>21</sup>

## 2. *Skilled Workers in Occupations with a Shortage*

The Federal Minister for Labor, Social Affairs, Health, and Consumer Protection, in agreement with the Federal Minister for Digital and Economic Affairs, is authorized to designate occupations with a federal or regional shortage for the next calendar year, when there has been a long-term labor shortage that cannot be satisfied with domestic workers.<sup>22</sup> A shortage is defined as an occupation for which there is a maximum of 1.5 applicants per available position.<sup>23</sup> Occupations with a maximum of 1.8 applicants may be considered when there are additional objective shortage indicators, such as a spike in numbers of apprenticeships.<sup>24</sup> For the year 2020, a new regulation designating 56 occupations Austria-wide as occupations with a shortage has been issued (Skilled Workers Regulation).<sup>25</sup> In addition, several regional shortages are identified in the

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<sup>20</sup> Id. § 13, para. 4.

<sup>21</sup> Verordnung der Bundesministerin für Arbeit, Soziales, Gesundheit und Konsumentenschutz für die Zulassung von Besonders Hochqualifizierten für das Jahr 2020, BGBl. II No. 420/2019, <https://perma.cc/R5NB-CX5L>.

<sup>22</sup> AuslBG, § 13, para. 1.

<sup>23</sup> Id. § 13, para. 1, sentence 2.

<sup>24</sup> Id. § 13, para. 1, sentence 3.

<sup>25</sup> Verordnung der Bundesministerin für Arbeit, Soziales, Gesundheit und Konsumentenschutz, mit der für das Jahr 2020 Mangelberufe für die Beschäftigung von ausländischen Fachkräften festgelegt werden [Fachkräfteverordnung 2020], BGBl. II No. 421/2019, § 1, para. 1, <https://perma.cc/5DAW-KVEK>.

Skilled Workers Regulation.<sup>26</sup> The number of Red-White-Red Cards available for regional shortage occupations is capped at 300.<sup>27</sup>

Applicants for a Red-White-Red Card for an occupation with a shortage must meet the following requirements:

- Provide proof of completed training in such an occupation
- Score a minimum of 55 out of 90 points according to the list of criteria set out in Annex B of the Aliens Employment Act
- Provide proof of a binding job offer in Austria and that the prospective employer is willing to pay the applicant the minimum pay stipulated by law, regulation, or collective agreement<sup>28</sup>

### 3. *Other Key Workers*

Other key workers may apply for a Red-White-Red Card if they meet the following specific criteria:

- The prospective employer will pay the statutory minimum salary of €2,685 gross monthly pay for key workers under 30 years of age or €3,222 gross monthly pay for key workers over 30 years of age<sup>29</sup>
- No equally qualified person registered as a jobseeker with the AMS can be placed in this position (labor market priority test)
- The applicant scored a minimum of 55 out of 90 points according to the list of criteria set out in Annex C of the Aliens Employment Act<sup>30</sup> (professional athletes and professional coaches may score an additional 20 points)<sup>31</sup>

### 4. *Graduates of Austrian Universities and Colleges of Higher Education*

Graduates of Austrian universities and other colleges of higher education may apply for a Red-White-Red Card if they have a firm job offer within their area of expertise that will pay a gross monthly salary comparable to the salary that an Austrian graduate with equivalent experience

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<sup>26</sup> Id. § 1, para. 2.

<sup>27</sup> Id. § 1, para. 3.

<sup>28</sup> AuslBG, § 12a.

<sup>29</sup> Id. § 12b, no. 1 in conjunction with Allgemeines Sozialversicherungsgesetzes [ASVG, BGBl. No. 189/1955, § 108, para. 3, <https://perma.cc/VG3V-8EZW>. Salary numbers are valid for 2020 and are recalculated each year.

<sup>30</sup> AuslBG, § 12b, no. 1.

<sup>31</sup> Id. annex B.

would receive for the same job; however, the salary cannot be less than €2,416.50 per month.<sup>32</sup> No labor market priority test is required.<sup>33</sup> Graduates are also not subject to the points system.

#### 5. *Self-Employed Key Workers*

Self-employed key workers will receive a Red-White-Red Card if their intended occupation will create macroeconomic benefits for Austria or will be of value to a certain region, in particular with regard to the related transfer of investment capital of at least €100,000 (about US\$111,425) or the creation of new jobs or the securing of existing jobs.<sup>34</sup> They are not subject to the points system.

#### 6. *Start-Up Founders*

For start-up founders, the additional requirements are as follows:

- Achieve a minimum score of 50 points out of 85 according to the list of criteria set out in Annex D of the Aliens Employment Act
- Establish a company in order to develop and launch innovative products, services, processing methods, or technologies
- Submit a consistent business plan for establishing and running that company;
- Personally exert a controlling influence on the management of the new company
- Provide evidence that starting capital of at least €50,000 (about US\$55,712) with an equity share of at least 50% will be provided<sup>35</sup>

### C. **Validity**

The Red-White-Red Card (residence permit) is initially issued for two years.<sup>36</sup> After the two years, a settlement permit may be issued, provided that all legal requirements are met.<sup>37</sup> An application for citizenship may be submitted after six years of continuous legal residence.<sup>38</sup>

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<sup>32</sup> Id. § 12b, no. 2 in conjunction with ASVG, § 108, para. 3.

<sup>33</sup> AuslBG, § 12b.

<sup>34</sup> Id. § 24, para. 1.

<sup>35</sup> Id. § 24, para. 2.

<sup>36</sup> NAG, § 41, para. 5.

<sup>37</sup> Id. § 43.

<sup>38</sup> Bundesgesetz über die österreichische Staatsbürgerschaft [Staatsbürgerschaftsgesetz 1985] [StbG], Bundesgesetzblatt [BGBl.] I No. 311/1985, § 11a, para. 6, <https://perma.cc/6B9N-UJ28>.

### III. Family Reunification

Family members of Red-White-Red Card holders must apply for Red-White-Red Card Plus if they intend to stay in Austria for more than six months.<sup>39</sup> Family members are defined as members of a nuclear family (*Kernfamilie*), meaning spouses, registered partners, and unmarried minors, including adoptive children and stepchildren.<sup>40</sup> Spouses and registered partners must be 21 years or older at the time of their application.<sup>41</sup> Family members are eligible for a Red-White-Red Card Plus if they fulfill the general requirements for a residence title set out in the first part of the Settlement and Residence Act as outlined above.<sup>42</sup>

In certain cases there is a quota requirement for family reunification residence permits; however the quota requirements do not apply to family members of Red-White-Red Card holders.<sup>43</sup> Holders of a Red-White-Red Card Plus have unlimited access to the Austrian labor market.<sup>44</sup> Family members need not possess basic German language skills.<sup>45</sup>

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<sup>39</sup> NAG, § 46 in conjunction with § 41a.

<sup>40</sup> Id. § 2, para. 1, no. 9.

<sup>41</sup> Id.

<sup>42</sup> Id. § 46, para. 1, no. 1.

<sup>43</sup> Id. § 46, para. 1, no. 2.

<sup>44</sup> AuslBG, § 17.

<sup>45</sup> NAG, § 21a, para. 4, no. 3.

# Canada

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**SUMMARY** In 2015, Canada introduced the Express Entry as a system that manages applications for three economic immigration programs the Federal Skilled Worker Program, Federal Skilled Trades Program, and Canadian Experience Class. The Express Entry application management system is governed under Ministerial Instructions. The system manages applications for permanent residence through a two-step process: First, the system assesses whether the applicant is eligible for any of the three programs and those that are placed in the Express Entry pool are assigned a Comprehensive Ranking System (CRS) score based on the information in their profile by looking at factors such as education, language ability, and work experience. Invitations for permanent residence are sent to the candidates with the highest scores in the pool. The points an applicant gets from the CRS have two components – a core set of points up to 600 based on factors such as skills and experience and a set of additional points up to 600 based on factors such as a valid job offer – with a total score out of 1,200 points. The CRS score is dynamic depending upon updates to the profile.

## I. Background

Immigration to Canada is predominantly regulated by the Immigration and Refugee Protection Act, 2001 (IRPA),<sup>1</sup> and its subsidiary rules and regulations.<sup>2</sup> Immigration to Canada is administered by the Canada Border Services Agency, which is responsible for border enforcement, immigration enforcement and customs services, and Immigration, Refugees and Citizenship Canada (IRCC), which “facilitates the arrival of immigrants, provides protection to refugees, and offers programming to help newcomers settle in Canada.”<sup>3</sup> Section 12(1) of IRPA stipulates that “[a] foreign national may be selected as a member of the economic class on the basis of their ability to become economically established in Canada.”<sup>4</sup> Furthermore, Part 6 of the Immigration and Refugee Protection Regulations further regulate programs under the Economic Classes immigrant category.

In 1967, Canada introduced the first ever points based system for economic immigration,<sup>5</sup> and applicants were assigned points based on nine criteria that appear to have been more or less maintained until 2015. However, how points were allocated did undergo various adjustments,

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<sup>1</sup> Immigration and Refugee Protection Act (IRPA), S.C. 2001, c. 27, <https://perma.cc/9TJF-L5UB>.

<sup>2</sup> Immigration and Refugee Protection Regulations, SOR/2002-227, <https://laws-lois.justice.gc.ca/eng/regulations/SOR-2002-227/index.html>.

<sup>3</sup> *Immigration, Refugees and Citizenship Canada*, Gov’t of Canada, <https://perma.cc/6DYS-MKAW>.

<sup>4</sup> IRPA, § 12(1).

<sup>5</sup> Org. for Econ. Cooperation & Dev. (OECD), *Recruiting Immigrant Workers: Canada* 43 (2019), <https://perma.cc/2SKV-UA9U>.

and the number of immigrants admitted under the system also fluctuated over the years.<sup>6</sup> In 2015, Canada introduced the Express Entry as a system that manages applications for three economic immigration programs, the Federal Skilled Worker Program, Federal Skilled Trades Program, and Canadian Experience Class. The Express Entry application management system is governed under Ministerial Instructions,<sup>7</sup> as authorized by section 10.3(1) of the IRPA. The system creates a pool of candidates who may be eligible to immigrate to Canada permanently.<sup>8</sup> The system was implemented “in an effort to solve the backlogs and skills mismatches that challenged the existing selection system. The Express Entry system sought to speed up the processing of applications, improve the ability of the selection system to address labor-market needs, reduce the inventory (backlog) of applications, and enable selection of the best applicants.”<sup>9</sup> A person must be eligible for one of the immigration programs to get into the pool. A person gets points based on the information in their profile, including skills and work experience. To be chosen from the pool and invited to apply, a person needs to have one of the highest-ranking scores. Those individuals are sent out invitations to apply for permanent residence.<sup>10</sup> The Comprehensive Ranking System (CRS) is the points-based system the immigration authorities use to assess and score a person’s profile,<sup>11</sup> and to rank them in the Express Entry pool.<sup>12</sup>

Please note that the province of Quebec has a special arrangement on immigration with the Federal government of Canada, and the province “has its own rules for choosing immigrants who will adapt well to living there,” including its own program to select skilled workers.<sup>13</sup> It utilizes a two-step process and a selection criteria that uses a point system as well. Additionally, there are Provincial Nominee programs that can also work through Express Entry, which allow Canadian provinces and territories to nominate persons who wish to immigrate to Canada and who would like to live in a particular province.<sup>14</sup>

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<sup>6</sup> Daniel Hiebert, Migration Pol’y Inst., *The Canadian Express Entry System for Selecting Economic Immigrants: Progress and Persistent Challenges* 2 (Apr. 2019), <https://perma.cc/BD2G-XGDH>. For more on the evolution of the economic immigrant selection process in Canada, see Robert Vineberg, *Improving Canada’s Selection of Economic Immigrants*, 12(2) Univ. Calgary SPP Briefing Paper (Jan. 16, 2019), <https://perma.cc/72XB-EQ2P>.

<sup>7</sup> *Ministerial Instructions Respecting the Express Entry System*, Immigr., Refugees & Citizenship Canada (IRCC), <https://perma.cc/5CSM-UQ32>; *Ministerial Instructions Respecting the Express Entry System – Current* (June 20, 2018), IRCC, <https://perma.cc/LXC6-AHCC>.

<sup>8</sup> *How We Rank Your Express Entry Profile*, IRCC, <https://perma.cc/B4T6-UYCT>.

<sup>9</sup> Daniel Hiebert, Migration Pol’y Inst., *supra* note 6, at 2.

<sup>10</sup> *Id.*

<sup>11</sup> *Comprehensive Ranking System (CRS) Criteria – Express Entry*, IRCC, <https://perma.cc/Y8PS-YX3C>.

<sup>12</sup> *How We Rank Your Express Entry Profile*, IRCC, *supra* note 8.

<sup>13</sup> *Quebec-Selected Skilled Workers: About the Process*, IRCC, <https://perma.cc/ET7K-E9CU>.

<sup>14</sup> *Immigrate as a Provincial Nominee Through Express Entry*, IRCC, <https://perma.cc/K3ZY-SA8W>.

## II. Points System Under the Express Entry Programs

The Express Entry system manages applications for permanent residence through a two-step process:

First, individuals express their interest in immigrating to Canada by completing an online profile, which is then screened electronically to determine if the individual is eligible for the Federal Skilled Worker Program, the Federal Skilled Trades Program, or the Canadian Experience Class. Individuals who meet the eligibility criteria for at least one of these programs are placed in the Express Entry pool and are assigned a Comprehensive Ranking System (CRS) score based on the information in their profile compared to a transparent scoring criteria, including factors such as education, language ability, and work experience. Candidates in the pool are ranked against one another based on their CRS score.<sup>15</sup>

The selection criteria to be eligible for the Federal Skilled Worker Program also involves the program's own points and requirements, which are detailed below. The other two programs (Federal Skilled Trades Program and Canadian Experience Class) do not appear to involve points in their eligibility criteria, so we have not included the requirements for those programs in this report.

### A. Federal Skilled Worker Program

According to IRCC, the Federal Skilled Worker Program is a program for skilled workers with foreign work experience and skills who want to immigrate to Canada permanently.<sup>16</sup> Canada's process for selecting skilled workers is fairly complex.

#### 1. Minimum Requirements

To be eligible for the program, an applicant must meet certain minimum program requirements, which include requirements on skilled work experience, language ability, and education. The applicant must have one uninterrupted year of full-time work experience or 1,560 hours total (30 hours per week) or the equivalent in part-time work experience that must be of skill type 0 (managerial jobs) or skill level A (professional jobs) or B (technical jobs and skilled trades) defined under the Canadian National Occupational Classification (NOC) job groups.<sup>17</sup> Applicants are also required to take approved language tests in English or French and get a minimum benchmark score for four abilities: writing, reading, listening, and speaking. If schooling was completed in Canada, the applicant must have a certificate, diploma or degree from a secondary institution (high school) or post-secondary institution or, if the education took place at foreign institutions, the applicant must have a completed credential and an Educational Credential Assessment from a designated organization demonstrating that the applicant's education is equal to that received by completing the requirements of a Canadian secondary or post-secondary institution.<sup>18</sup>

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<sup>15</sup> *Express Entry Year-End Report 2018*, IRCC, <https://perma.cc/2YFN-35KD>.

<sup>16</sup> *Eligibility to Apply as a Federal Skilled Worker (Express Entry)*, IRCC, <https://perma.cc/P5E9-VR5B>.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

An applicant must also show he or she has enough money for the applicant and the applicant's family to settle in Canada, unless the applicant is currently able to work legally in Canada or has a valid job offer from an employer in Canada. Lastly, the applicant and all family members must be "admissible" to Canada under Canadian immigration law. If an application meets minimum requirements, it will then be assessed according to the six selection factors discussed below.<sup>19</sup>

## 2. Selection Criteria

Applicants must obtain at least 67 points out of a total of 100 possible points on the selection factors. According to IRCC, if an applicant's score is 67 points or higher, they may qualify for the Federal Skilled Worker Program. An applicant who meets the other minimum requirements as well can enter the Express Entry pool. Once in the Express Entry pool, Immigration uses the CRS to rank the applicant's profile. A person who scores lower than 67 points cannot qualify for the program.<sup>20</sup>

The six selection criteria and the maximum number of points available for each are as follows:

- **Languages:** A maximum of 28 points can be awarded to persons who are able to communicate in English, French or both official languages of Canada. An applicant can be awarded up to 24 points for basic, moderate, or high proficiency in English and French. Approved language tests are administered to ascertain a person's ability to write, read, listen and speak. To measure English or French levels, authorities use Canadian Language Benchmarks (CLB) for English and Niveaux de compétence linguistique canadiens (NCLC) for French. A person must get a minimum level of CLB 7 or NCLC 7 for one official language in all four language areas. To get points for the second official language, an applicant must meet the minimum level of CLB 5 or NCLC 5 in all four language areas.
- **Education:** A maximum of 25 points can be earned by a person who went to school in Canada. The applicant must have a certificate, diploma or degree from a Canadian secondary institution or post-secondary institution. Applicants with a foreign education must get their education credentials assessed for immigration purposes from a designated organization showing that the education is equal to a Canadian secondary or post-secondary level of education.
- **Work Experience:** Points can be awarded for experience in full-time paid work or an equal amount of part-time work at a certain skill type or skill levels from the NOC. It can be in Canada or abroad, while the person was studying or if they were self-employed. For one year of experience, the person can earn a maximum of nine points; for two to three years, 11 points; for four to five years, 13 points; and for six or more years, an applicant can get the maximum amount of 15 points.
- **Age:** A maximum of 12 points is awarded to persons who are between 18 and 46 years of age. Persons outside this range get no points.

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<sup>19</sup> Id.

<sup>20</sup> *Six Selection Factors – Federal Skilled Worker Program (Express Entry)*, IRCC, <https://perma.cc/M5RW-EZE8>.

- **Arranged employment:** A person may be awarded 10 points for having a permanent job offer for at least one year from a Canadian employer. The offer must be received prior to applying to come to Canada as a Federal Skilled Worker.
- **Adaptability:** A person may be awarded a maximum of 10 points for adaptability by combining a number of elements, including: a spouse or partner's language level or past studies/work, the applicant's past studies or work in Canada, arranged employment in Canada, and an adult relative (as defined under the program) who is a Canadian citizen or a permanent resident in Canada.<sup>21</sup>

## B. Comprehensive Ranking System

If an applicant is eligible for the Federal Skilled Worker Program, the Federal Skilled Trades Program, or the Canadian Experience Class, that person is accepted into a pool of candidates. Then the person is ranked using the CRS. Invitations for permanent residence are sent to the candidates with the highest scores in the pool.<sup>22</sup> The points an applicant gets from the CRS have two components—a core set of points up to 600 “depending on the person's human capital characteristics (i.e., age, education, official language proficiency, and work experience),”<sup>23</sup> and a set of additional points up to 600—with a total score out of 1,200 points:<sup>24</sup>

Core: Up to 600 points

1. Skills and experience factors
2. Spouse or common-law partner factors, such as their language skills and education
3. Skills transferability, including education and work experience

Additional: Up to 600 points

1. Canadian degrees, diplomas or certificates
2. a valid job offer
3. a nomination from a province or territory
4. a brother or sister living in Canada who is a citizen or permanent resident
5. strong French language skills

Core points + Additional points = your total score<sup>25</sup>

A further breakdown of these points is found in the Appendix. As noted earlier, the CRS score is dynamic depending upon updates on the profile:

Candidates in the Express Entry pool must update their profile to reflect any change in circumstances and this action can trigger a recalculation of the CRS score. Some updates are

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<sup>21</sup> Id.

<sup>22</sup> *How Express Entry Works*, IRCC, <https://perma.cc/M843-2XNS>.

<sup>23</sup> *Express Entry Year-End Report 2018*, IRCC, *supra* note 15.

<sup>24</sup> *How We Rank Your Express Entry Profile*, IRCC, *supra* note 8.

<sup>25</sup> Id. For a complete breakdown of points per factor, see *Comprehensive Ranking System (CRS) Criteria – Express Entry*, IRCC, <https://perma.cc/7Q6X-VFBQ>. Part of the breakdown is provided in the Appendix.

automatically triggered when milestones, such as a birthday or expiry of language test results, are reached. Accordingly, candidates can take steps to increase their CRS score, thereby increasing the probability they will be selected to receive an ITA. For example, a candidate could increase their proficiency in an official language, secure arranged employment, or provide an educational credential assessment for education acquired abroad.<sup>26</sup>

### C. Round of Invitations

Approximately every two weeks, the Canadian government conducts an Express Entry draw or round of invitations. Each round specifies the number of invitations issued, the rank required to be invited to apply, and the CRS cut-off score (the score of the lowest-ranked candidate invited) for permanent residence. These invitations are called Invitation to Apply (ITA) and are “auto-generated correspondence issued to Express Entry candidates through their online account.”<sup>27</sup> According to a 2018 report:

[A] Ministerial Instruction is published specifying the number of invitations to apply (ITA) for permanent residence that will be sent to candidates in the Express Entry pool on a specific date. The Ministerial Instruction may also specify that the ITA round will target one or more of the Express Entry economic immigration categories. For a given round, invitations are issued to candidates, in descending CRS score rank order, until the maximum number of invitations specified in the associated Ministerial Instruction is met. The profiles of candidates who do not receive an ITA, or decline an ITA, remain in the pool for up to 12 months. Candidates who receive an ITA but do not react are withdrawn from the pool.<sup>28</sup>

Once candidates receive an ITA, they are given 60 days to complete and submit an official electronic Application for Permanent Residence.<sup>29</sup> Once an application is received, an immigration officer assesses the application to “verify the applicant’s CRS score and program eligibility, and to ensure the principal applicant and any accompanying family members are not inadmissible.” If the immigration officer is “satisfied that all conditions have been met and that the principal applicant and any accompanying family members are not inadmissible, they are approved for a permanent resident visa. Applicants and their accompanying family members become permanent residents when they are admitted to Canada.”<sup>30</sup>

### III. Family Reunification

All applications for permanent residency under Canada’s economic immigration programs, including the Federal Skilled Worker Program, allow candidates to apply as a family.<sup>31</sup> Typically,

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<sup>26</sup> *Express Entry Year-End Report 2018*, IRCC, *supra* note 15.

<sup>27</sup> *Express Entry: Invitation to Apply*, Gov’t of Canada, <https://perma.cc/Z32Z-FHYX>.

<sup>28</sup> *Express Entry Year-End Report 2018*, IRCC, *supra* note 15.

<sup>29</sup> *Express Entry Rounds of Invitations*, IRCC, <https://perma.cc/TN6J-AQNB>.

<sup>30</sup> *Express Entry Year-End Report 2018*, IRCC, *supra* note 15.

<sup>31</sup> *Can You Immigrate to Canada with Your Family?* Canadian Immigr. L. Firm (May 22, 2019), <https://perma.cc/AS27-TCV6>.

this “requires one person to apply as the principal applicant.”<sup>32</sup> Family members who can be processed for permanent residence as dependents include a

- spouse or common-law partner,
- dependent child under the age of 22,
- spouse or common-law partner’s dependent child, and
- a dependent child of a dependent child.<sup>33</sup>

Once the application is approved, “all family members included on the application will become Canadian permanent residents.”<sup>34</sup> Many permanent residency programs, including the popular Federal Skilled Worker program, “require applicants to show that they have enough money to support their settlement in Canada. This amount increases with each additional family member.”<sup>35</sup> Family members who cannot come with the applicant under the economic immigration programs include parents, grandparents, siblings, uncles, aunts, nephews, nieces, and other relatives. However, under the family sponsorship program, an applicant may be able to sponsor them after the applicant immigrates to Canada.<sup>36</sup>

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<sup>32</sup> Id.

<sup>33</sup> *Which Family Members Can Come with Me to Canada When I Immigrate?*, IRCC, <https://perma.cc/X33G-NBAJ>.

<sup>34</sup> *Can You Immigrate to Canada with Your Family?*, Canadian Immigr. L. Firm, *supra* note 31.

<sup>35</sup> Id.

<sup>36</sup> *Family Sponsorship*, IRCC, <https://perma.cc/DFJ5-RUQH>.

**APPENDIX: Skilled Migrant Category Resident Visa Points Table**

**A. Core / Human Capital Factors**

<b>Factors</b>	<b>Points per factor - with a spouse or common-law partner</b>	<b>Points per factor - without a spouse or common-law partner</b>
Age	100	110
Level of education	140	150
Official languages proficiency	150	160
Canadian work experience	70	80

**B. Spouse or Common-Law Partner Factors**

<b>Factors</b>	<b>Points per factor (Maximum 40 points)</b>
Level of education	10
Official language proficiency	20
Canadian work experience	10

**A. Core/Human Capital + B. Spouse or Common-Law Partner Factors = Maximum 500 Points (with or without a spouse or common-law partner)**

**C. Skill Transferability Factors (Maximum 100 Points)**

<b>Education</b>	<b>Points per factor (Maximum 50 points)</b>
With good/strong official languages proficiency <b>and</b> a post-secondary degree	50
With Canadian work experience <b>and</b> a post-secondary degree	50

<b>Foreign Work Experience</b>	<b>Points per factor (Maximum 50 points)</b>
With good/strong official languages proficiency (Canadian Language Benchmark [CLB] level 7 or higher) <b>and</b> foreign work experience	50
With Canadian work experience <b>and</b> foreign work experience	50

<b>Certificate of qualification (for people in trade occupations)</b>	<b>Points per factor (Maximum 50 points)</b>
With good/strong official languages proficiency and a certificate of qualification	50

**A. Core/Human Capital + B. Spouse or Common-Law Partner + C. Transferability Factors = Maximum 600 Points**

**D. Additional Points (Maximum 600 Points)**

<b>Factor</b>	<b>Maximum points per factor</b>
Brother or sister living in Canada (citizen or permanent resident)	15
French language skills	30
Post-secondary education in Canada	30
Arranged employment	200
PN [Provincial Nominee] nomination	600

**A. Core/Human Capital + B. Spouse or Common-Law Partner Factors + C. Transferability Factors + D. Additional Points = Grand Total - Maximum 1,200 Points**

*Source: Comprehensive Ranking System (CRS) Criteria – Express Entry, IRCC, <https://perma.cc/Y8PS-YX3C>. Please note that the site has a further points breakdown section by section.*

# Japan

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**SUMMARY** Japan implemented the Points-based System for Highly Skilled Foreign Professionals in 2012. Academic background, professional career, annual salary, and age are considered when calculating points, among other things. Qualified persons may receive preferential treatment, including preferential treatment for their family members, such as a work permit for a spouse and resident status for parents under certain conditions. The number of highly skilled foreign professionals who are accepted has increased according to government plans.

## I. Background

Based on the idea that human resources are the key to sustainable economic growth,<sup>1</sup> Japan's Cabinet established the Council for the Promotion of Acceptance of Highly Skilled Professionals in 2008 to discuss a long-term strategy for attracting foreign highly skilled professionals.<sup>2</sup> In its report in 2009, the Council wrote that Japan should accept those highly skilled professionals "who are expected to bring innovation to the Japanese industries, to promote development of specialized/technical labor markets through friendly competition with Japanese people and to increase efficiency of the Japanese labor markets."<sup>3</sup>

In its 2010 edition of the Basic Plan for Immigration Control the Ministry of Justice, which has the Immigration Bureau under its jurisdiction, stated that it planned to introduce a points-based system to attract foreign highly skilled professionals by making employment, working, social, and living conditions more attractive to them.<sup>4</sup> Following Ministry of Justice notifications for implementation,<sup>5</sup> the points-based system was implemented in May 2012.<sup>6</sup> In 2014, the Diet

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<sup>1</sup> 高度人材受入推進会議 [Council for the Promotion of Acceptance of Highly Skilled Professionals], Prime Minister's Office of Japan, <https://perma.cc/QL3V-JFZZ>.

<sup>2</sup> Council for the Promotion of Acceptance of Highly Skilled Professionals, 外国高度人材受入政策の本格的展開を(報告書) [Full Development of Policy to Accept More Foreign Highly Skilled Professionals (Report)], at 1 (May 2009), <https://perma.cc/99UV-JEKQ>.

<sup>3</sup> Id. at 4, translated in *Points-based System for Highly Skilled Foreign Professionals*, Immigration Bureau of Japan, <https://perma.cc/9VBD-3WYA>.

<sup>4</sup> Ministry of Justice (MOJ), *Basic Plan for Immigration Control* 21 (4th ed., Mar. 2010), <https://perma.cc/65NG-XFFR>.

<sup>5</sup> 「出入国管理及び難民認定法第七条第一項第二号の規定に基づき高度人材外国人等に係る同法別表第一の五の表の下欄（二に係る部分に限る。）に掲げる活動を定める件」, MOJ Notification No. 126 (Mar. 30, 2012) & 「出入国管理及び難民認定法第七条第一項第二号の規定に基づき高度人材外国人等に係る同法別表第一の五の表の下欄（二に係る部分に限る。）に掲げる活動を定める件第二条の表の下欄に掲げる活動を指定されて在留する者等の在留手続の取扱いに関する指針」, MOJ Notification No. 127 (Mar. 30, 2012).

<sup>6</sup> MOJ Notification No. 126, *supra* note 5, Supp. Provision; MOJ Notification No. 127, *supra* note 5, Supp. Provision.

(Japan's parliament) amended the Immigration Control and Refugee Recognition Act and created a new status of stay for foreigners: Highly Skilled Professionals.<sup>7</sup> The system has been improved over time.<sup>8</sup>

## II. Categories and Points

In principle, foreign nationals entering and residing in Japan must obtain a residence status in order to reside in the country and carry out the activities stipulated in the Immigration Control and Refugee Recognition Act.<sup>9</sup> The scope of activities in which a foreign national may engage while residing in Japan is determined by this residence status.<sup>10</sup>

The activities in which highly skilled foreign professionals with residence status may engage are classified into three categories:

- Research, research guidance, or education based on a contract entered into with a public or private organization in Japan (advanced academic research activities)
- Work requiring specialized knowledge or skills in the field of natural sciences or humanities based on a contract entered into with a public or private organization in Japan (advanced specialized/technical activities)
- The operation or management of a public or private organization in Japan (advanced business management activities)<sup>11</sup>

Points are set for each activity category, as illustrated by the Appendix to this survey. Academic background, professional career, annual salary, and age are considered, among other things. To receive preferential immigration treatment, the applicant must garner at least 70 points.<sup>12</sup>

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<sup>7</sup> Immigration Control and Refugee Recognition Act, Cabinet Order No. 319 of 1951, amended by Act No. 74 of 2014, table 1-2.

<sup>8</sup> Fukuoka City Secretariat, 外国人の受入れについて [Regarding Acceptance of Foreigners], 議会調査レポート [City Assembly Research Report] No. 23, at 15-18 (Feb. 2019), <https://perma.cc/7WCV-PTMF>.

<sup>9</sup> Immigration Control and Refugee Recognition Act, Cabinet Order No. 319 of 1951, amended by Act No. 102 of 2018, <https://perma.cc/M9TZ-SDYL> (translation, as amended by Act No. 88 of 2016).

<sup>10</sup> JETRO, *Laws & Regulations on Setting Up Business in Japan* § 2.2, <https://perma.cc/ZU2E-BLHQ>.

<sup>11</sup> Immigration Control and Refugee Recognition Act, art. 2-2, table 1-2. See also *Points-based System for Highly Skilled Foreign Professionals*, supra note 3.

<sup>12</sup> *Points-based System for Highly Skilled Foreign Professionals*, supra note 3.

### III. Preferential Immigration Treatment

A qualified person may receive the following types of preferential treatment, including treatment for family members:

- Permission for multiple activities

A qualified person may engage in activities covered by multiple statuses of residence, “such as simultaneously engaging in research activities at a university and in the management of a business organization related thereto.”<sup>13</sup>

- Grant of five-year period of stay

All highly skilled foreign professionals receive a five-year period of stay, which is the longest term granted to residents given limited-stay permits.<sup>14</sup>

- Shorter period to qualify for permanent residence

A qualified person is typically eligible to apply for permanent residence after three years of engaging in activities as a highly skilled foreign professional. However, this period is shortened to one year if the person scores 80 points or more. In principle, in order to obtain permanent residence, a foreign national is required to stay continuously in Japan for 10 years or more.<sup>15</sup>

- Work permission for spouses

The spouse of a highly skilled foreign professional may engage in activities covered by other statuses of residence for work, such as instructor or engineer, even if he/she does not have the academic background or work experience that is usually required.<sup>16</sup>

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<sup>13</sup> *Availability of Preferential Treatment*, Immigration Bureau of Japan, <https://perma.cc/T5AA-2NXW>.

<sup>14</sup> Enforcement Ordinance of the Immigration Control and Refugee Recognition Act, MOJ Ordinance No. 54 of 1981, amended by MOJ Ordinance No. 19 of 2018, <https://perma.cc/TUR9-LM5Q> (unofficial English translation as amended by MOJ Ordinance No. 19 of 2017).

<sup>15</sup> *Availability of Preferential Treatment*, *supra* note 13.

<sup>16</sup> MOJ Notification No. 126 (Mar. 30, 2012), *supra* note 5, art. 2, ho & attached table 2.

- Permission to bring parents to Japan under certain conditions

Though the parents of foreign nationals who are authorized to work in Japan are not usually allowed to accompany their children to Japan, a highly skilled professional may bring either his/her own parents or his/her spouse's parents (not both sets of parents) in order to obtain the parents' assistance in rearing children under seven years of age or in personally caring for a pregnant spouse. To qualify, however, the annual household income of the highly skilled foreign professional must be at least 8 million yen (about US\$72,600). The parents must also have lived with the highly skilled foreign professional previously.<sup>17</sup>

- Permission to bring a domestic worker under certain conditions

The situations in which foreign workers may bring their foreign domestic workers to Japan are very limited. However, a highly skilled foreign professional may bring one foreign domestic worker to Japan subject to the following conditions:

- The annual salary of the highly skilled foreign professional's household must be at least 10 million yen (about US\$91,000).
- The highly skilled foreign professional must plan to pay the domestic worker at least 200,000 yen (about US\$1,820) per month.
- The domestic worker accompanying the highly skilled foreign professional must either have been employed by the foreign professional for at least one year by the time of entry into Japan,<sup>18</sup> or must be coming for the purpose of caring for the highly skilled foreign professional's child under 13 years of age or spouse who is unable to do housework due to illness or for other reasons.<sup>19</sup>

- Preferential processing of entry and residence procedures

Applications for entry and stay of highly skilled foreign professionals are processed more quickly than others. Applications for a preliminary immigration examination (issuance of a certificate of eligibility) are scheduled to be processed within 10 days of receipt.<sup>20</sup>

- Even Better Conditions after Three Years

A highly skilled professional who has engaged in the designated activities for three years or more may apply for another status (Highly Skilled Professional II),<sup>21</sup> which allows almost all of the activities of other statuses of residence based on employment. In addition, the Ministry

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<sup>17</sup> Id. art. 2, table chi.

<sup>18</sup> Id. art. 2, table he.

<sup>19</sup> Id. art. 2, table to.

<sup>20</sup> *Availability of Preferential Treatment*, supra note 13.

<sup>21</sup> See also Question 27, *FAQ on the Points-Based Preferential Immigration Treatment for Highly Skilled Foreign Professionals*, MOJ, <https://perma.cc/2JJ4-WW4Y>.

of Justice grants a person with highly skilled professional II status an indefinite period of stay.<sup>22</sup>

#### IV. Statistics

During the first 11 months (2012–2013) after implementation of the points-based system, only 430 highly skilled foreign professionals were accepted, but subsequent years saw this number increase dramatically. The government aimed to accept 10,000 highly skilled professionals per year by 2020 and 20,000 by 2022. The 2020 target was already achieved in 2017 with the acceptance of 10,572 such professionals. The 2022 target will likely be achieved early as well, because the number was already 15,386 in 2018.<sup>23</sup>

Among accepted highly skilled professionals, about 66% were from China. The second most represented county was the United States, with 4.6%.<sup>24</sup>

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<sup>22</sup>【高度専門職 2 号】在留資格変更許可申請 [(Highly Skilled Professional II) Application for Status of Residence Change], MOJ, <https://perma.cc/R324-RRQA>.

<sup>23</sup> Ministry of Internal Affairs and Communications, 高度外国人材の受入れに関する政策評価書 [*Policy Evaluation Report on Accepting Highly Skilled Foreign Professionals*] 19-20 (June 2019), <https://perma.cc/A3EL-CJ23>.

<sup>24</sup> *Id.* at 26.

## Appendix Points Calculation Table

Advanced academic research activities		Advanced specialized / technical activities		Advanced business management activities	
<b>Academic Background</b>	Holder of a doctor's degree (excluding professional degrees)	30	Holder of a doctor's degree (excluding professional degrees)	30	<b>① Required minimum annual salary</b>
	Holder of a master's degree (including professional degrees)	20	Holder of a master's degree (including professional degrees) (See Note 7)	20	
	Holder of a bachelor's degree or acquisition of an education equivalent thereto (excluding holders of a doctor's degree or master's degree)	10	Holder of a bachelor's degree or acquisition of an education equivalent thereto (excluding holders of a doctor's degree or master's degree)	10	
	Holder of doctor's degrees, master's degrees or professional degrees in multiple areas	5	Holder of doctor's degrees, master's degrees or professional degrees in multiple areas	5	
<b>Professional Career (Practical Experience) (See Note 1)</b>	7 years or more	15	7 years or more	15	<b>② Annual salary points allocation table</b>
	5 years or more	10	5 years or more	10	
	3 years or more	5	3 years or more	5	
<b>Annual Salary (See Note 2)</b>	The lower limit of the annual salary to which points are awarded, will differ depending on the age group. For further details, refer to ②.	40	The lower limit of the annual salary to which points are awarded, will differ depending on the age group. For further details, refer to ②.	40	<b>③ Research achievements</b>
		5		5	
		10		10	
		10		10	
<b>Age</b>	Up to 29 years of age	15	Up to 29 years of age	15	<b>Research Achievements *</b>
	Between 30 and 34 years of age	10	Between 30 and 34 years of age	10	
	Between 35 and 39 years of age	5	Between 35 and 39 years of age	5	
<b>Bonus Point 1 (Research Achievements)</b>	For further details, refer to ③.	25	For further details, refer to ③.	15	<b>Research Achievements *</b>
		20		15	
<b>Bonus Point 2 (Position)</b>		10		10	
		5		5	
<b>Bonus Point 3</b>		10	Holder of a Japanese national qualification related to the work (5 points per qualification)	10	
		10		10	
<b>Bonus Point 4</b>	Work for an organization which receives financial support measures (measures provided for separately in a public notice) for the promotion of innovation (See Note 3)	10	Work for an organization which receives financial support measures (measures provided for separately in a public notice) for the promotion of innovation (See Note 3)	10	
		5		5	
<b>Bonus Point 5</b>	Employed by a small or medium-sized enterprise whose experiment and research expenses add up to more than 3% of the total revenue.	5	Employed by a small or medium-sized enterprise whose experiment and research expenses add up to more than 3% of the total revenue.	5	
		5		5	
<b>Bonus Point 6</b>	Holder of a foreign qualification, etc. related to the work	5	Holder of a foreign qualification, etc. related to the work	5	
		5		5	
<b>Bonus Point 7</b>	Acquisition of a degree from a Japanese institution of higher education	10	Acquisition of a degree from a Japanese institution of higher education	10	
		10		10	
<b>Bonus Point 8</b>	Acquisition of Level N1 of the Japanese Language Proficiency Test (See Note 4), or a person who graduated from a foreign university having majored in Japanese language.	15	Acquisition of Level N1 of the Japanese Language Proficiency Test (See Note 4), or a person who graduated from a foreign university having majored in Japanese language.	15	
		15		15	
<b>Bonus Point 9</b>	Acquisition of Level N2 of the Japanese Language Proficiency Test (See Note 5) (excluding points acquired through Bonus Points 7 or 8)	10	Acquisition of Level N2 of the Japanese Language Proficiency Test (See Note 5) (excluding points acquired through Bonus Points 7 or 8)	10	
		10		10	
<b>Bonus Point 10</b>	Work on an advanced project in a growth field (limited to the project recognized by the Minister of Justice)	10	Work on an advanced project in a growth field (limited to the project recognized by the Minister of Justice)	10	
		10		10	
<b>Bonus Point 11</b>	Graduation from a university separately specified by the Minister of Justice in a public notice	10	Graduation from a university separately specified by the Minister of Justice in a public notice	10	
		10		10	
<b>Bonus Point 12</b>	Completion of the training separately specified by the Minister of Justice in a public notice (See Note 6)	5	Completion of the training separately specified by the Minister of Justice in a public notice (See Note 6)	5	
		5		5	
<b>Bonus Point 13</b>		5	Investment of 100 million yen or more in the business the person manages	5	
		5		5	
<b>Required score</b>		<b>70</b>	<b>Required score</b>		<b>70</b>

Source: Points Calculation Table, Immigration Services Agency of Japan, <https://perma.cc/X2JK-YLLA>.

# South Korea

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**SUMMARY** Korea uses a points-based system for four visas/statuses of residence. Among them, the technology start-up (D-8-4) and persons with exceptional capabilities (F-5-11) visas can be used by foreigners to enter South Korea. Foreigners who have been in Korea may also apply for technology start-up (D-8-4) status. The job seeker (D-10) and long-term residency for skilled foreign professionals (F-2-7) statuses are for foreigners who have been in Korea.

## I. Technology Start-Up (D-8-4)

To foster the Korean technology industry, the Korean government added D-8-4 start-up visa/sojourn status to the D-8 visa/status (Corporate Investment) in October 2013.<sup>1</sup> It enabled foreign technology entrepreneurs to obtain sojourn status without investing large amounts of money.<sup>2</sup> Certain intellectual property rights holders and inventors can apply for a D-8-4 visa from foreign countries where they reside.

In addition, researchers and inventors who have been in Korea legally can apply for the status.<sup>3</sup> The government established the Overall Assistance for Startup Immigration System (OASIS) to allow foreigners in Korea to earn points toward D-8-4 status.<sup>4</sup>

To be eligible for this visa/sojourn status, applicants must have a bachelor's degree or higher, have established a Korean corporation and completed the necessary corporate and business registrations, and have obtained 80 points or more.<sup>5</sup> An applicant must gain points from at least one item from the following required item list.<sup>6</sup>

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\* At present there are no Law Library of Congress research staff members versed in Korean. This report has been prepared by the author's reliance on practiced legal research methods and on the basis of relevant legal resources, chiefly in English, currently available in the Law Library and online.

<sup>1</sup> 출입국관리법 시행규칙 [Immigration Control Act Enforcement Ordinance], Ministry of Justice (MOJ) Decree No. 367 (Apr. 1, 1993), amended by MOJ Ordinance No. 963 (Dec. 24, 2019), art. 12 and attached table 1-2, item 11 (D-8).

<sup>2</sup> Elaine Ramirez, *Support for Foreign Start-Ups Reveals Redundancies*, Korea Herald (June 18, 2015, updated Sept. 11, 2019), <https://perma.cc/ZG34-EC39>.

<sup>3</sup> Williams Kyei, *List of Government Programs that Support Foreign Startups in Korea*, SeoulZ (Sept. 17, 2019), <https://perma.cc/VW6B-X5AS>.

<sup>4</sup> Ramirez, *supra* note 2.

<sup>5</sup> 주재, 기업투자, 무역경영 [*Residency, Corporate Investment, Trade Management*], Embassy of the Republic of Korea in Japan, <https://perma.cc/NJ4J-VHK6>.

<sup>6</sup> Ju Hyun Chung, *Guide for Foreigner Entrepreneurship (D-8-4) Visa Acquisition* (Feb. 17, 2018), <https://perma.cc/GJ3K-P4A9> (in Korean). Note: Points distribution in the chart is different from the

Item	Point
Intellectual property ownership: patent or utility patent	80
Intellectual property ownership: design	50
Intellectual property application: patent or utility patent	20
Intellectual property application: design	10
Co-inventor of registered intellectual property right: patent or utility	5
Co-inventor of registered intellectual property right: design	3
3 years stay as researcher (E-3)	15
OASIS Program 6 participation and receipt of 1 <sup>st</sup> to 3 <sup>rd</sup> invention prize	25
OASIS participation and selection by the central or local government	25

Source: *Guide for Foreigner Entrepreneurship (D-8-4) Visa Acquisition*, <https://perma.cc/GJ3K-P4A9> (in Korean).

If an applicant owns a patent right, he or she can satisfy the minimum score of 80. Applicants can add more points from the optional item list. Completion of an OASIS program gains 15 or 25 points, depending on the program. One hundred million won (about US\$85,000) or more in capital investment adds 15 points. A PhD degree adds 10 points, and a Bachelor's or Master's degree earned in Korea adds five points. English skill or completion of another program adds 10 points.<sup>7</sup>

## II. Job Seeker (D-2)

MOJ's 2015 Sojourn Guide for Foreigners states that, when D-10 status (job seeker) holder extends his or her stay, a points-based system applies if the applicant earned a Bachelor's degree at a Korean University (most likely current or former student visa holders) and satisfies other requirements.<sup>8</sup> A government website for foreign students does not state whether, when a D-2 status (student) holder changes status to D-10, a points-based system is used.<sup>9</sup> However, an immigration consultant's website explains that a points-based system is used when a D-2 status holder switches status to D-10.<sup>10</sup> We could not determine whether this difference comes from a recent change in the regulation.

The points are explained on the consultant's website. A successful applicant must earn at least 20 points from basic items and earn a total of 60 points or more, including points from additional items. Age and education are considered basic items. In addition, work experience, study at a Korean college, training in Korea and Korean language ability add points. As bonus points, recommendation from agencies, work experience at Fortune 500 companies, degrees from 200 selected universities, a Bachelor's degree in science or engineering, and experience in a position

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government's brochure. (*Start-Up Visa (D-8-4) & Overall Assistance for Start-Up Immigration System (OASIS)*, Gov't of S. Korea, <https://perma.cc/VDU9-ECLD>.) However, it appears that the brochure was published in 2015. (Ramirez, *supra* note 2.) The information in the brochure is likely outdated.

<sup>7</sup> Chung, *supra* note 6.

<sup>8</sup> Korea Immigr. Serv., Ministry of Just., *Sojourn Guide for Foreigners* 91 (Aug. 17, 2015), <https://perma.cc/2MN7-945G>.

<sup>9</sup> *Guidelines on Employment for International Students in Korea*, Gov't of S. Korea, <https://perma.cc/9T4Y-6HVD>.

<sup>10</sup> *Point System D10 Visa*, Visas Korea, <https://perma.cc/5TSM-J7N9>.

with a salary over US\$50,000 are considered. If an applicant violated the law in the past, points are deducted.<sup>11</sup>

### III. Long-Term Residency for Skilled Foreign Professionals (F-2-7)

Since 2010, South Korea has offered long-term residency for qualifying skilled foreign professionals who have been in Korea,<sup>12</sup> through a points-based system.<sup>13</sup> Those professionals must have been living in Korea legally for at least a year under a different status before their application. Points are given based on academic qualifications, Korean language proficiency, income, and age.<sup>14</sup> Applicants who acquire 80 points out of 125 points are entitled to F-2-7 residence status.<sup>15</sup>

The maximum period for F-2-7 status is three years.<sup>16</sup> A foreigner who has F-2-7 status can work without a sponsor. Also, a family member can obtain sojourn status.<sup>17</sup> Permanent residence status is allowed after three years of having F-2 status, rather than five years as would normally be required.<sup>18</sup>

A few websites suggest that the system changed in January 2020. According to an immigration consultant's website, the new regulation requires F-2-7 status holders to have 80 points to extend their stay. In addition, an income condition is added when family members also stay in Korea.<sup>19</sup>

### IV. Permanent Resident: Persons with Exceptional Capabilities (F-5-11)

Persons with exceptional capabilities in such fields as science, business management, education, arts, and sports can obtain permanent resident status based on points. Successful applicants must have the qualifications required by at least one of the compulsory items and satisfy other requirements. Compulsory items are: being a prominent world figure, having a celebrated research outcome, being a world famous sports star, having lecture experience at a globally renowned university, having work experience at a global company, having work experience at a

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<sup>11</sup> Id.

<sup>12</sup> Immigration Control Act Enforcement Ordinance, art. 12 and attached table 1-2, item 24 (F-2).

<sup>13</sup> OECD, *Recruiting Immigrant Workers: Korea 2019* (2019), <https://perma.cc/69EY-2A4V>.

<sup>14</sup> Korea Immigr. Serv., *supra* note 8, at 184-85.

<sup>15</sup> F-2-7 *Ling-Term Residency Visa*, Visas Korea, <https://perma.cc/LZ5X-M73S>. The chart of the points is included. Note: The 2015 *Sojourn Guide for Foreigners*, *supra* note 8, states that the maximum amount of points is 120 (at 184-85). The system may have changed since 2015.

<sup>16</sup> Korea Immigr. Serv., *supra* note 8, at 178; and Visas Korea, *supra* note 15.

<sup>17</sup> Visas Korea, *supra* note 15 and OECD, *supra* note 13.

<sup>18</sup> Visas Korea, *supra* note 15 and OECD, *supra* note 13.

<sup>19</sup> Visas Korea, *supra* note 15.

large company, having intellectual property rights, and having exceptional talent in science, business management, education, arts, or sports.<sup>20</sup>

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<sup>20</sup> Korea Immigr. Serv., *supra* note 8, at 219-23; and *F-5-11 Permanent-Residency Visa*, Visas Korea, <https://perma.cc/AV7P-G5VP>.

# New Zealand

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**SUMMARY** New Zealand currently uses points-based systems for two categories of residence class visas: the Skilled Migrant Category resident visa and the Investor 2 Category resident visa. The process for these visas involves the submission of an expression of interest (EOI) where a person claims points for various factors. The two visa categories have separate points tables based on the criteria for the particular visa. For the Skilled Migrant Category, EOIs are entered into a pool only if a certain minimum number of points are claimed, and will only be selected from the pool if they meet a higher minimum. For the Investor 2 Category, EOIs that meet the set requirements are entered into the pool and ranked according to the number of points claimed. For both visas, once an EOI has been selected from the pool, the person is sent an invitation to apply for the visa. These visas allow the primary applicant to include his or her partner and any dependent children (aged under 25 years) on the application.

A points-based system is also used for one work visa category: the Entrepreneur Work Visa. The visa allows holders to come to New Zealand for 12 months to buy or set up a business, then to stay for a further 24 months once the business has been established, and can be renewed. Partners and dependent children (aged under 20 years) can be included in the visa application. There is no EOI process for this visa.

In addition to family members being able to obtain a visa through being included on the application of a primary applicant for the above visas, there are temporary and residence visas available to partners and dependent children of New Zealand citizens, residents, and temporary visa holders. This includes two residence visas for parents of New Zealand citizens or residents: the Parent Resident Visa and the Parent Retirement Resident Visa. The Parent Resident Visa requires a sponsoring adult child and the applicant parent to meet minimum income requirements, among other criteria. The Parent Retirement Resident Visa includes requirements for the parent applicant to have a minimum annual income, investment funds, and additional funds.

## I. Introduction

New Zealand's visa system includes both temporary and residence class visas. The system is overseen and implemented by Immigration New Zealand, an agency within the Ministry of Business, Immigration and Employment.

The New Zealand Residence Programme (NZRP) established 50,000 to 60,000 approved places for new resident visas over the 18-month period that started July 1, 2018, and ended on December

31, 2019.<sup>1</sup> The NZRP consisted of three streams with places allocated as follows: Skilled/Business (25,500 to 30,600), Family (19,000 to 22,800), and International/Humanitarian (5,500 to 6,600).<sup>2</sup> The NZRP does not include “[p]ermanent resident visas granted to holders of resident visas or second or subsequent resident visas granted to former holders of resident visas.”<sup>3</sup> A new approach to resident visa planning focusing on “the management of specific residence visa types” is to commence in 2020; however, details and allocations have not yet been announced.<sup>4</sup>

Temporary entry class visas include different study and work visas, in addition to visitor visas, that allow individuals to live in New Zealand for a certain purpose and time period.

Good character requirements apply to both residence<sup>5</sup> and temporary visas.<sup>6</sup> Health criteria also apply, including requirements for evidence of a chest x-ray or medical examination depending on a person’s length of stay.<sup>7</sup> In addition, many visa categories have English language requirements.<sup>8</sup>

New Zealand currently uses points-based systems for two categories of residence class visas (the Skilled Migrant Category resident visa and the Investor 2 Category resident visa)<sup>9</sup> and one work visa category (the Entrepreneur Work Visa).<sup>10</sup> These visas allow for the inclusion of the partner and any dependent children of the primary applicant in the original application. The separate family stream within the NZRP consists of visa categories available to family members of New Zealand citizens and residence class visa holders.

The immigration system in New Zealand is governed by the Immigration Act 2009<sup>11</sup> and associated regulations,<sup>12</sup> particularly the Immigration (Visa, Entry Permission, and Related

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<sup>1</sup> Immigration New Zealand, *Operational Manual: Residence Part 1*, at 96 (May 27, 2019), <https://perma.cc/75EX-QFQ7>.

<sup>2</sup> Id. at 97.

<sup>3</sup> Id. at 96.

<sup>4</sup> *Government Updates New Zealand Residence Programme*, Immigration New Zealand (Feb. 19, 2019), <https://perma.cc/N8U8-UT8C>.

<sup>5</sup> *Good Character for Residence Visas*, Immigration New Zealand, <https://perma.cc/DD7A-AKDA>.

<sup>6</sup> *Good Character for Temporary Visas*, Immigration New Zealand, <https://perma.cc/LM72-UZCC>.

<sup>7</sup> *Who Needs an X-Ray or Medical Examination*, Immigration New Zealand, <https://perma.cc/3Y44-GYJS>; *Evidence You Are in Good Health*, Immigration New Zealand, <https://perma.cc/LG23-5ZN2>; Immigration New Zealand, *Operational Manual: Administration* 31 (May 27, 2019), <https://perma.cc/HL8M-ECTJ>.

<sup>8</sup> *English Language*, Immigration New Zealand, <https://perma.cc/92S4-8LUW>.

<sup>9</sup> *Operational Manual: Residence Part 1*, supra note 1, at 98.

<sup>10</sup> Id. at 115-35.

<sup>11</sup> Immigration Act 2009, <https://perma.cc/3VMD-HHVP>.

<sup>12</sup> See generally *Immigration Law*, Immigration New Zealand, <https://perma.cc/LZ4G-4G4C>.

Matters) Regulations 2010.<sup>13</sup> Specific rules and criteria for different visas are set out in immigration instructions, which are contained in the *Immigration New Zealand Operational Manual*.<sup>14</sup> In addition, various internal administration circulars and other documents provide guidance and advice to immigration staff on procedures and processes.<sup>15</sup>

## II. Points System for Skilled Migrant Category Resident Visa

Persons who obtain a resident visa under the Skilled Migrant Category are able to live, work, and study in New Zealand indefinitely. Applicants are able to include their partner, and dependent children aged 24 years and under, in their application.<sup>16</sup> In addition to each person on the application meeting health and character requirements, the principal applicant for a Skilled Migrant Category visa must provide particular evidence of his or her English language ability.<sup>17</sup> Other people on the application aged 16 years or over must either meet the same requirements or pre-purchase an English language course in New Zealand.<sup>18</sup>

A points-based system is used to assess expressions of interest for this visa, with individuals who claim to have greater than a certain number of points in their expression of interest possibly being selected to apply. Points are awarded for a person's age (must be under 55 years to qualify for this visa); working in skilled employment in New Zealand currently, or having an offer of such employment; levels of qualification; length of skilled work experience, having had New Zealand work experience, and work experience in an area of "absolute skills shortage" (based on the Long Term Skills Shortage List<sup>19</sup>); and the partner's English language ability, work in or offer of work in skilled employment in New Zealand, and qualifications.<sup>20</sup> A full points table is provided in Appendix I of this report.

Immigration New Zealand explains that there are four stages to the process:<sup>21</sup>

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<sup>13</sup> Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010, <https://perma.cc/5CLY-RM52>.

<sup>14</sup> *Immigration Instructions*, Immigration New Zealand, <https://perma.cc/EUB4-8XG2>.

<sup>15</sup> *Internal Administration Circulars*, Immigration New Zealand, <https://perma.cc/RD5H-LE8T>; *Advice to Immigration Staff*, Immigration New Zealand, <https://perma.cc/8VYB-48JR>.

<sup>16</sup> *Information about Skilled Migrant Category Resident Visa*, Immigration New Zealand, <https://perma.cc/6HTM-PW8X>.

<sup>17</sup> *Skilled Migrant Category English Requirements*, Immigration New Zealand, <https://perma.cc/MG5P-NQ7V>.

<sup>18</sup> *Id.*

<sup>19</sup> See *What Is the Long Term Skills Shortage List?*, Immigration New Zealand, <https://perma.cc/GT3P-9EZM>.

<sup>20</sup> *Skilled Migrant Expression of Interest*, Immigration New Zealand, <https://perma.cc/5ZNH-4FXS>; Immigration New Zealand, *Operational Manual: Residence Part 2*, at 9-10 (May 27, 2019), <https://perma.cc/N5TU-6CSJ>.

<sup>21</sup> *Information about Skilled Migrant Category Resident Visa*, *supra* note 16.

1. Submit an Expression of Interest (EOI): Individuals need to claim at least 100 points in order to be accepted in the pool. Evidence for the different points' categories does not need to be submitted with an EOI. Currently, only those EOIs with 160 points or more are being selected to be sent an invitation to apply.
2. Invitation to apply: Usually about every two weeks, Immigration New Zealand selects EOIs from the pool. Each EOI is assessed to check that the right number of points have been claimed. If the selection threshold (i.e., 160 points) is met, an individual may be sent an invitation to apply for residence.
3. Submit application: An individual who is invited to apply for residence is sent an "Application for Residence under the Skilled Migrant Category" form<sup>22</sup> and must submit the application within four months of the invitation being issued. Documents must be provided to support the applicant's claims about employability, health, character, and English-speaking ability. An "Employer Supplementary Form"<sup>23</sup> is also sent to the applicant for his or her prospective employer to complete.
4. Decision on application: Immigration New Zealand makes a decision about the application. This may include an interview. According to Immigration New Zealand, 90% of applications are currently completed within 14 months.

The fee for submitting an online EOI is currently NZ\$530 (about US\$350), while the fee for a paper EOI is NZ\$680 (about US\$450).<sup>24</sup> The fee for the residence application is NZ\$3,310 (about US\$2,190) if made from outside New Zealand or the Pacific; NZ\$2,440 (about US\$1,615) if made from a country in the Pacific region; and NZ\$2,710 (about US\$1,790) if made from within New Zealand.<sup>25</sup> All Skilled Migrant applications are sent to New Zealand for processing.<sup>26</sup>

Once an individual has had their application approved, conditions apply with respect to the time frames for taking up offers of skilled employment and remaining in the relevant position. Residence visa holders can travel in and out of New Zealand on their valid foreign passport until the travel conditions expire. Travel conditions expire two years from the date on which a person first arrives in New Zealand. In order to travel after that period, an individual needs to apply for and be granted either a Permanent Resident Visa or a variation of the travel conditions.<sup>27</sup>

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<sup>22</sup> Immigration New Zealand, *Application for Residence Guide: Skilled Migrant Category* (INZ 1105, May 2019), <https://perma.cc/4H59-K4DU>.

<sup>23</sup> Immigration New Zealand, *Employer Supplementary Form: Skilled Migrant Category* (INZ1235, Nov. 2017), <https://perma.cc/UVE8-X3WG>.

<sup>24</sup> Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 sch 4.

<sup>25</sup> Id. schs 4 & 6; *Information about Skilled Migrant Category Resident Visa: Fees & Receiving Centre*, Immigration New Zealand, <https://perma.cc/Y2CD-6SPQ>.

<sup>26</sup> *Information about Skilled Migrant Category Resident Visa: Fees & Receiving Centre*, supra note 25.

<sup>27</sup> *Information about Skilled Migrant Category Resident Visa: Conditions*, Immigration New Zealand, <https://perma.cc/S8M4-6LPU>.

### III. Points System for Investor 2 Category Resident Visa

The Investor 2 Category resident visa is targeted at “[e]xperienced business people who have a minimum of NZ\$3 million [about US\$1.98 million] in available funds or assets.”<sup>28</sup> As with the Skilled Migrant Category resident visa, this visa enables indefinite stay in New Zealand and the inclusion of a person’s partner, and children aged 24 years and under, in the application. It is available to persons aged up to 65 years. There is currently a quota of 400 visas per year for this category.<sup>29</sup>

The process for obtaining this visa involves first submitting an EOI in which a person claims a certain number of points in different areas. Points can be claimed for the number of years of business experience (minimum of three years), amount of investment funds available, English-language ability, and age. Bonus points can be claimed for having an investment of at least NZ\$750,000 (about US\$496,200) in growth investments.<sup>30</sup> The full points table is provided in Appendix II of this report.

An EOI will be entered into the pool if the person meets the health and character requirements (and others included in the EOI also meet certain requirements), claims at least one point for English language ability, is aged 65 years or under, has claimed points for a minimum of three years of business experience, has claimed points for a minimum of NZ\$3 million investment funds, and confirms he or she meets the “fit and proper person” requirements.<sup>31</sup> EOIs entered into the pool are ranked on the basis of total points claimed and may be selected “according to their points ranking in quantities sufficient to fulfill the annual approval cap.”<sup>32</sup> An EOI is current for a period of six months from its initial submission to the pool. After that period, it will be withdrawn from the pool.<sup>33</sup>

A person whose EOI is selected from the pool may be invited to apply for a resident visa under the Investor 2 Category if the information provided does not indicate the presence of any relevant health or character issues and a business immigration specialist considers that the person’s claims with respect to the points for the different aspects are credible.<sup>34</sup> Once an invitation to apply for the visa has been issued, the person must submit an application within four months of the issue date.<sup>35</sup> The application will be assessed based on various factors, including that the applicant “qualifies for the points on the basis of which their EOI was selected from the Pool.”<sup>36</sup>

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<sup>28</sup> *Information about Investor 2 Resident Visa*, Immigration New Zealand, <https://perma.cc/W5YM-S2PN>.

<sup>29</sup> *Id.*

<sup>30</sup> *Check Your Points for Investor 2 Resident Visa*, Immigration New Zealand, <https://perma.cc/5B38-PVRM>.

<sup>31</sup> *Operational Manual: Residence Part 1*, *supra* note 1, at 240 & 294 (definition of a “fit and proper” person).

<sup>32</sup> *Id.* at 241.

<sup>33</sup> *Id.* at 242.

<sup>34</sup> *Id.* at 243.

<sup>35</sup> *Id.* at 246.

<sup>36</sup> *Id.* at 247.

Once an application has been approved in principle, the applicant is advised that a resident visa will be granted once they “provide acceptable evidence of having transferred and invested the nominated funds (less any discount for investment in ‘growth investments’); provide a New Zealand address at which they can be contacted, after they arrive in New Zealand; and submit evidence that anyone aged over 16 years in the application meets the English language requirement.”<sup>37</sup> Principal applicants “must meet the requirements for transferring and investing the nominated funds within 12 months of the date of the letter advising of approval in principle.”<sup>38</sup> In the meantime, a work visa may be granted to allow the applicant to arrange the transfer and investment of funds, with visitor or student visas also issued to the applicant’s partner and dependents.<sup>39</sup>

The conditions for this visa include retaining an acceptable investment in New Zealand for a minimum of four years, the applicant spending a minimum amount of time in the country during that period,<sup>40</sup> and the completion of an English language course (if he or she was only awarded one point for English language ability).<sup>41</sup> The same travel conditions that apply to the Skilled Migrant Category resident visa also apply to this visa.<sup>42</sup>

The fee for submitting an EOI for this visa category is NZ\$620 (about US\$410). The application fee is NZ\$5,070 (about US\$3,350) if made from within New Zealand and NZ\$4,960 (about US\$3,280) if made from outside the country.<sup>43</sup>

#### **IV. Points System for Entrepreneur Work Visa**

The Entrepreneur Work Visa is a special category of work visa “with conditions that allow self-employment in New Zealand.”<sup>44</sup> It is described by Immigration New Zealand as follows:

This visa is for people who want to work in their own business in New Zealand. To apply, you’ll need to provide a detailed business plan, have at least NZ \$100,000 [about US\$66,155] to invest in your business and be able to claim 120 points on our points scale. If you’re granted this visa, you can buy or set up a business without living here permanently, or as a first step towards New Zealand residence.<sup>45</sup>

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<sup>37</sup> Id. at 271.

<sup>38</sup> Id. at 274.

<sup>39</sup> Id. at 277.

<sup>40</sup> Id. at 281.

<sup>41</sup> Id. at 280.

<sup>42</sup> *Information About Investor 2 Resident Visa: Conditions*, Immigration New Zealand, <https://perma.cc/5TKX-948D>.

<sup>43</sup> Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 schs 4 & 6.

<sup>44</sup> *Operational Manual: Residence Part 1*, supra note 1, at 118.

<sup>45</sup> *Information about Entrepreneur Work Visa*, Immigration New Zealand, <https://perma.cc/SG5C-ACHK>.

The visa allows holders to come to New Zealand for 12 months to buy or set up their business, then to stay for a further 24 months once the business has been established. The visa can be renewed if certain conditions are met.<sup>46</sup> An applicant can include his or her partner, and dependent children aged 19 years or under, in the application.<sup>47</sup> There is no initial EOI requirement for this visa, and all documentation must be provided with the visa application.

Applicants and any partner or dependent child accompanying them must meet the health and character requirements for residence as well as meeting all requirements for temporary entry. To be granted the visa, applicants must demonstrate that they will meet a minimum capital investment of NZ\$100,000, be awarded a minimum of 120 points for the factors in the points scale, provide a business plan that meets specific requirements, have obtained any necessary professional or business registration in New Zealand, not have been involved in any bankruptcy or business failure in the preceding five years, not have been involved in any business fraud or financial impropriety, provide evidence of sufficient funds (in addition to the investment capital) to finance their business as well as provide maintenance and accommodation for themselves and any accompanying family members, and have sufficient business experience relevant to their business proposal and a genuine intent to establish the business. The applicant must also meet the specified English language requirements and meet the “fit and proper person” requirements.<sup>48</sup>

The points scale for the Entrepreneur Work Visa awards points based on the amount that the person will invest in New Zealand; the length of his or her business, self-employment, or senior management experience; benefits to New Zealand from the business, in terms of the number of full-time jobs, forecast turnover in annual exports, and provision of “a product or service that is unique or new to its New Zealand location”; the person’s age (points only awarded if aged 59 years or younger); and business location (points awarded if it will be outside of Auckland).<sup>49</sup> The full points table is attached in Appendix III of this report.

The application fee for this visa is NZ\$3,365 (about US\$2,225) if the application is made within or outside New Zealand; a lower fee of NZ\$2,855 (about US\$1,890) applies to applications from countries in the Pacific region.<sup>50</sup>

## **V. Visas for Family Members**

### **A. Residence Visas**

As indicated above, primary applicants for many temporary and residence class visas can include their partner and dependent children (up to certain age limits) in their application, including

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<sup>46</sup> *Operational Manual: Residence Part 1*, supra note 1, at 118.

<sup>47</sup> *Information about Entrepreneur Work Visa*, supra note 45.

<sup>48</sup> *Operational Manual: Residence Part 1*, supra note 1, at 120 & 294.

<sup>49</sup> *Id.* at 123-24; *Entrepreneur Visa: Points Scale*, Immigration New Zealand, <https://perma.cc/SRH9-RYHF>.

<sup>50</sup> Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 schs 4 & 6.

those visas that use a points-based system for selecting and assessing applicants.<sup>51</sup> In addition, the following are residence class visas available to family members of New Zealand citizens and resident class visa holders as part of the NZRP family stream:

- Partnership Category resident visa (Partner of a New Zealander resident visa)<sup>52</sup>
- Dependent Child Category resident visa<sup>53</sup>
- Parent Category resident visa (Parent Resident Visa)<sup>54</sup>
- Parent Retirement Category resident visa (Parent Retirement Resident Visa)<sup>55</sup>

There are also special residence visas available to family members of refugees.<sup>56</sup>

### 1. Parent Resident Visa

The Parent Resident Visa is reopening in February 2020 with new requirements and a new limit of 1,000 approved visas per year.<sup>57</sup> The process for obtaining this visa includes the submission of an EOI, selection from the pool, and an invitation to apply. A person must have an adult child in New Zealand who is eligible to sponsor him or her, and must have no dependent children. The person can include their partner in their application. In order to be a sponsor, the adult child must have been a New Zealand resident or citizen for at least three years, and have spent 184 days in the country for each of those years. The adult child and applicant must also meet minimum income criteria (either individually or jointly with a partner).<sup>58</sup>

According to Immigration New Zealand, once selected from the pool, 90% of applicants for a Parent Resident Visa are completed within 25 months.<sup>59</sup> The fees for this visa are NZ\$1,480 (about

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<sup>51</sup> See generally *Support Family*, Immigration New Zealand, <https://perma.cc/9TCT-SLA2>.

<sup>52</sup> *Information about Partner of a New Zealander Resident Visa*, Immigration New Zealand, <https://perma.cc/ZF4T-FHJH>; *Operational Manual: Residence Part 1*, supra note 1, at 302-303.

<sup>53</sup> *Information about Dependent Child Resident Visa*, Immigration New Zealand, <https://perma.cc/87FD-NBP4>; *Operational Manual: Residence Part 1*, supra note 1, at 358-59.

<sup>54</sup> *Information about Parent Resident Visa*, Immigration New Zealand, <https://perma.cc/LX6H-K2Z6>; *Changes to the Parent Resident Visa – Applications Reopen in 2020*, Immigration New Zealand, <https://perma.cc/DP3Y-EBT9>.

<sup>55</sup> *Information about Parent Retirement Resident Visa*, Immigration New Zealand, <https://perma.cc/RS8Y-JQ4N>; *Operational Manual: Residence Part 1*, supra note 1, at 314-29.

<sup>56</sup> *Information about Refugee Family Support Resident Visa*, Immigration New Zealand, <https://perma.cc/BL79-CDPH>; *Operational Manual: Residence Part 2*, supra note 20, at 317-23 & 326-27.

<sup>57</sup> *Changes to the Parent Resident Visa – Applications Reopen in 2020*, supra note 54.

<sup>58</sup> *Id.*; *Information about Parent Resident Visa*, supra note 54.

<sup>59</sup> *Information about Parent Resident Visa: Process*, Immigration New Zealand, <https://perma.cc/U2DW-ECC3>.

US\$980) if made from within New Zealand or a country in the Pacific region, and NZ\$2,250 (about US\$1,490) if made from anywhere else in the world.<sup>60</sup>

## 2. *Parent Retirement Resident Visa*

Immigration New Zealand describes the Parent Retirement Resident Visa as follows:

If you have an adult child who is a New Zealand citizen or resident, you can apply to live in New Zealand permanently. You'll need an annual income of NZ \$60,000 [about US\$39,700] plus NZ \$1 million [about US\$661,300] to invest for 4 years, and another NZ \$500,000 [about US\$330,600] to live on. Once you've completed the 4-year investment period, you'll be eligible for permanent residence.<sup>61</sup>

The visa allows the holder to live, work, and study in New Zealand. Applicants can include their partner in their application. The principal applicant must not have any dependent children and must "be the parent of an adult child whose primary place of established residence is New Zealand and is a New Zealand citizen or a residence class visa holder."<sup>62</sup> According to Immigration New Zealand, 90% of applications for this visa are completed within 18 months.<sup>63</sup> The fee for applying for this visa is NZ\$3,720 (about US\$2,460), regardless of the applicant's location.<sup>64</sup>

## **B. Temporary Visas**

There are also various temporary class visas available to family members of New Zealand citizens and either temporary or residence class visa holders. These include, for example, work and visitor visas for partners and dependent children of New Zealand citizens, residents, or temporary visa holders, and the Parent and Grandparent Visitor Visa, which allows parents and grandparents of New Zealand citizens or resident children or grandchildren to visit New Zealand multiple times on one visa (up to six months at a time with a maximum total stay of 18 months in three years).<sup>65</sup>

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<sup>60</sup> Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 schs 4 & 6.

<sup>61</sup> *Information about Parent Retirement Resident Visa*, supra note 55.

<sup>62</sup> *Operational Manual: Residence Part 1*, supra note 1, at 322.

<sup>63</sup> *Information about Parent Retirement Resident Visa*, supra note 55.

<sup>64</sup> Immigration (Visa, Entry Permission, and Related Matters) Regulations 2010 schs 4 & 6.

<sup>65</sup> *Information about Parent and Grandparent Visitor Visa*, Immigration New Zealand, <https://perma.cc/2ZKW-E52M>.

**APPENDIX I: Skilled Migrant Category Resident Visa Points Table**

Factors		Points
<b>Age (20 to 55 years)</b>	20-39	30
	40-44	20
	45-49	10
	50-55	5
<b>Skilled employment</b>	Current skilled employment in New Zealand or an offer of skilled employment in New Zealand	50
<b>Bonus points for skilled employment</b>	Current skilled employment in New Zealand or an offer of skilled employment in New Zealand in an area of absolute skills shortage	10
	Current skilled employment or an offer of skilled employment outside the Auckland region	30
	Current skilled employment or an offer of skilled employment with remuneration of least \$50.00 per hour, or the equivalent annual salary	20
<b>Skilled work experience</b>	2 years	10
	4 years	20
	6 years	30
	8 years	40
	10 years	50
<b>Additional bonus points if skilled work experience is in New Zealand</b>	1 year or more	10

Points-Based and Family Immigration: New Zealand

<b>Additional bonus points for skilled work experience in an area of absolute skills shortage</b>	2 to 5 years	10
	6 years or more	15
<b>Qualifications</b>	Recognised level 3 qualification if included on the List of Qualifications Exempt from Assessment (LQEA)	40
	Recognised level 4-6 qualification (e.g. trade qualification, diploma)	40
	Recognised level 7 or 8 qualification (e.g. bachelor's degree, bachelor's degree with Honours)	50
	Recognised level 9 or 10 post-graduate qualification (Master's degree, Doctorate)	70
<b>Bonus points for qualifications gained in New Zealand</b>	2 years of full-time study in New Zealand completing a recognised bachelor degree (level 7) New Zealand qualification; or	10
	1 year of full-time study in New Zealand completing a recognised post-graduate New Zealand qualification; or	10
	2 years of full-time study in New Zealand completing a recognised post-graduate New Zealand qualification	15
<b>Bonus points for partner's skilled employment</b>	Partner's current skilled employment in New Zealand or offer of skilled employment in New Zealand.	20
<b>Bonus points for partner's qualification (either)</b>	Recognised qualification at level 7 or 8; or	10
	Recognised qualification at level 9 or above	20

*Source:* Immigration New Zealand, *Operational Manual: Residence Part 2*, at 9-10 (SM1.10 Points for Employability and Capacity Building Factors) (May 27, 2019; table effective Nov. 26, 2018), <https://perma.cc/N5TU-6CSJ>.

**APPENDIX II: Investor 2 Category Resident Visa Points Tables**

<b>Age</b>	<b>Points</b>	
60 - 65	0	
50 - 59	5	
40 - 49	10	
30 - 39	15	
Less than 30	20	
<b>Business Experience years</b>	<b>Points</b>	
3	9	
4	12	
5	15	
6	18	
7	21	
8	24	
9	27	
10	30	
11	33	
12	36	
13	39	
14	42	
15+	45	
<b>Test</b>	<b>Required Score</b>	<b>Points</b>
International English Language Testing System (IELTS) - General or Academic Module	Overall score of 3.0 or more but less than 4.0	1

Points-Based and Family Immigration: New Zealand

IELTS - General or Academic Module	Overall score of 4.0 or more but less than 5.0	4
TOEFL iBT	Overall score of 31 to 34	
PTE Academic	Overall score of 29 to 35	
B2 First (First Certificate in English) (formerly Cambridge English: First (FCE)) or B2 First for Schools (First Certificate in English) (formerly Cambridge English: First (FCE) for Schools)	Overall score of 142 to 153	
OET	Grade D or higher in all four skills (Listening, Reading, Writing and Speaking)*	
IELTS - General or Academic Module	Overall score of 5.0 or more	10
TOEFL iBT	Overall score of 35 or more	
PTE Academic	Overall score of 36 or more	
B2 First (First Certificate in English) (formerly Cambridge English: First (FCE)) or B2 First for Schools (First Certificate in English) (formerly Cambridge English: First (FCE) for Schools)	Overall score of 154 or more	
OET	Grade C or higher in all four skills (Listening, Reading, Writing and Speaking)*	

Points-Based and Family Immigration: New Zealand

IELTS - General or Academic Module	Overall score of 6.0 or more	13
TOEFL iBT	Overall score of 60 or more	
PTE Academic	Overall score of 50 or more	
B2 First (First Certificate in English) (formerly Cambridge English: First (FCE)) or B2 First for Schools (First Certificate in English) (formerly Cambridge English: First (FCE) for Schools)	Overall score of 169 or more	
IELTS - General or Academic Module	Overall score of 7.0 or more	17
TOEFL iBT	Overall score of 94 or more	
PTE Academic	Overall score of 65 or more	
B2 First (First Certificate in English) (formerly Cambridge English: First (FCE)) or B2 First for Schools (First Certificate in English) (formerly Cambridge English: First (FCE) for Schools)	Overall score of 185 or more	
OET	Grade B or higher in all four skills (Listening, Reading, Writing and Speaking)*	
IELTS - General or Academic Module	Overall score of 8.0 or more	20

Points-Based and Family Immigration: New Zealand

TOEFL iBT	Overall score of 110 or more	
PTE Academic	Overall score of 79 or more	
B2 First (First Certificate in English) (formerly Cambridge English: First (FCE)) or B2 First for Schools (First Certificate in English) (formerly Cambridge English: First (FCE) for Schools)	Overall score of 200 or more	
OET	Grade A or higher in all four skills (Listening, Reading, Writing and Speaking)*	

\* A score in all four skills is required for the OET as there is no overall grade in this test.

Investment Amount (NZ\$M)	Points	Investment Amount (NZ\$M)	Points
\$3	10	\$6.5	80
\$3.25	15	\$6.75	85
\$3.5	20	\$7	90
\$3.75	25	\$7.25	95
\$4	30	\$7.5	100
\$4.25	35	\$7.75	105
\$4.5	40	\$8	110
\$4.75	45	\$8.25	115
\$5	50	\$8.5	120
\$5.25	55	\$8.75	125
\$5.5	60	\$9	130

Points-Based and Family Immigration: New Zealand

\$5.75	65	\$9.25	135
\$6	70	\$9.5	140
<b>Investment in Growth Investments</b>			<b>Bonus points</b>
Investment of NZ\$750,000 or more in growth investments			20

*Source:* Immigration New Zealand, *Operational Manual: Residence Part 1*, at 266-68 (BJ6 Summary of Points for the Investor 2 Category) (May 27, 2019; tables effective May 21, 2018), <https://perma.cc/75EX-QFQ7>.

**APPENDIX III: Entrepreneur Work Visa Points Table**

<b>Points for business experience (can be awarded in only one category)</b>	
<b>Relevant self-employment</b>	
10 years +	40
5 years +	30
3 years +	20
<b>Other self-employment</b>	
10 years +	20
5 years +	15
3 years +	5
<b>Relevant senior management experience</b>	
10 years +	10
5 years +	5
<b>Points for benefit to New Zealand (can be awarded in up to two categories)</b>	
<b>New full time employment creation</b>	
10+ new full time positions for New Zealand citizens or residents	80
5 or more new full time positions for New Zealand citizens or residents	50
3 or more new full time positions for New Zealand citizens or residents	30
2 new full time positions for New Zealand citizens or residents	20
1 new full time position for a New Zealand citizen or resident.	10

Points-Based and Family Immigration: New Zealand

<b>Points for approved export businesses (based on annual turnover)</b>	
\$1,000,000 + turnover a year	80
\$750,000 + turnover a year	60
\$500,000 + turnover a year	40
\$400,000 + turnover a year	30
\$300,000 + turnover a year	20
\$200,000 + turnover a year	10
<b>Points for unique or new products or services to New Zealand</b>	
A credible business proposal that provides unique or new products/ services to New Zealand, or to a particular region.	30
<b>Points for capital investment</b>	
\$1,000,000 +	80
\$750,000 +	60
\$500,000 +	50
\$400,000 +	30
\$300,000 +	20
\$200,000 +	10
under \$200,000	0
<b>Points for age of prospective applicant (at date of lodging application)</b>	
24 and under	15
25-29	20
30-39	20
40-49	20
50-59	10

## Points-Based and Family Immigration: New Zealand

60 and over	0
<b>Bonus points</b>	
Business based outside Auckland as defined in BB6.1.35.	40

*Source:* Immigration New Zealand, *Operational Manual: Residence Part 1*, at 123-24 (BB3.10 Points Scale for an Entrepreneur Work Visa) (May 27, 2019; table effective Dec. 7, 2015), <https://perma.cc/75EX-QFQ7>.

# United Kingdom

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**SUMMARY** The United Kingdom (UK) operates a points-based program in its immigration system. The law provides for five different tiers, some of which have additional subcategories. Points are awarded for different attributes within those tiers. Most of the tiers require that the applicant have a job offer and be sponsored by an employer licensed by UK Visas and Immigration. This sponsorship requirement aims to make the employer responsible for the migrant worker and includes notification requirements if the employee stops working. Dependents may apply to enter the UK under the majority of subcategories within the tiers, and there is a maintenance requirement that must be demonstrated for most dependent applicants.

## I. Introduction

Since 1891, it has been established at common law that “no alien has any right to enter [what is now the United Kingdom] except by leave of the Crown.”<sup>1</sup> The Aliens Restriction Act 1914,<sup>2</sup> the Aliens Restriction (Amending) Act 1919,<sup>3</sup> and Rules and Orders made under these Acts<sup>4</sup> gave the common law a statutory basis and formed the restrictions on immigration for much of the twentieth century. The statutory regime governing immigration in the United Kingdom (UK) is now primarily contained in the Immigration Act 1971<sup>5</sup> and the Immigration Rules<sup>6</sup> made under it. The law requires that individuals who are not British or Commonwealth citizens with the right of abode in the UK, nor members of the European Economic Area (EEA),<sup>7</sup> obtain leave to enter the UK from an immigration officer upon their arrival.<sup>8</sup>

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<sup>1</sup> *Musgrove v. Chun Teeong Toy* [1891] A.C. 272, followed in *Schmidt v. Home Office* [1969] 2 Ch. 149.

<sup>2</sup> Aliens Restriction Act, 1914, 4 & 5 Geo. 5, c. 12.

<sup>3</sup> Aliens Restriction (Amendment) Act, 1919, c. 92, <https://perma.cc/PB25-BC4M>.

<sup>4</sup> Aliens Order, (1920) Stat R. & O. 448 (as amended).

<sup>5</sup> Immigration Act 1971, c. 77, <https://perma.cc/6KV4-GKLN>.

<sup>6</sup> Immigration Rules, <https://perma.cc/8ZLM-VBCS>. See *R v. Chief Immigration Officer, Heathrow Airport, ex. p. Salamat Bibi* [1976] 3 All ER 843 (CA) per Roskill, LJ: “these rules are [not administrative practice and are] just as much delegated legislation as any other form of rule making activity . . . [and] to my mind, are just as much a part of the law of England as the 1971 Act itself.”

<sup>7</sup> The European Economic Area consists of the Members of the European Union, plus Norway, Iceland, and Liechtenstein.

<sup>8</sup> Immigration Act 1971, c. 77 § 3.

## II. Number of Immigrants

The estimated population of the UK, as of mid-2018, was reported to be 66.4 million people.<sup>9</sup> The main source of growth of the UK population is net migration. In the year ending November 2019, 212,000 more people entered the UK with the intention to stay 12 or more months than left, with 609,000 people immigrating to the UK and 397,000 emigrating from the UK.<sup>10</sup> One in seven of the population is foreign born.<sup>11</sup> The five most common countries that foreign-born UK residents come from are India, Poland, Pakistan, Romania, and the Republic of Ireland.<sup>12</sup>

## III. The Points-Based Migration System

The law governing, and policy surrounding, immigration in the UK is highly complex and successive governments have attempted to balance the needs of genuine visitors and the contributions they make to the economy of the UK with concerns about those that wish to enter for undesirable purposes. This report details the points-based system for worker migration into the UK and whether or not their dependent family members are eligible to join them. Given the complexity of the immigration system, this report provides a necessarily high-level overview.

UK Visas and Immigration (UKVI) is responsible for implementing the points-based system, which aims to provide a simplified immigration system and attract migrants who will contribute to the UK. As the purpose of the majority of the points-based worker categories is to fill positions that cannot be filled by a UK resident, there is a resident labor market test that must be performed. This is designed to ensure that there are no UK residents that are able to perform the job for which the employer sponsors a migrant worker.<sup>13</sup>

The system is structured so that emphasis is placed on employers who sponsor applicants to keep track of their employees and report any suspected abuses to UKVI.<sup>14</sup> The objective of tying these requirements to the employer is to improve compliance with the immigration system and reduce abuse.<sup>15</sup>

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<sup>9</sup> *Overview of the UK Population: August 2019*, Office for National Statistics (Aug. 23, 2019), <https://perma.cc/533D-MXL3>

<sup>10</sup> *Migration Statistics Quarterly Report: November 2019*, Office for National Statistics (Nov. 28, 2019), <https://perma.cc/6WWJ-3HQZ>.

<sup>11</sup> *Population of the UK by Country of Birth and Nationality: 2018*, Office for National Statistics (May 24, 2019), <https://perma.cc/96F7-ZV8G>.

<sup>12</sup> *Population of the UK by Country of Birth and Nationality*, Office for National Statistics (Nov. 29, 2019), <https://perma.cc/Y4GZ-2N6T>.

<sup>13</sup> National Audit Office, *Immigration: The Points-Based System – Work Routes* ¶ 3.18 (Report by the Comptroller and Auditor General, H.C. 819, 2010–2011, Mar. 15, 2011), <https://perma.cc/9FTQ-MF6S>.

<sup>14</sup> *Id.* ¶ 2. See also Home Office, *An Employer's Guide to Right to Work Checks* (June 29, 2018), <https://perma.cc/NKQ8-XMYU>.

<sup>15</sup> National Audit Office, *supra* note 13, at 4.

There are five different tiers within the points-based program, which are further broken down into subcategories with varying requirements that must be met before an applicant is provided with a visa for entry. The tiers cover various types of workers, elite sportspeople, and students:

- Tier 1: Exceptionally talented migrants<sup>16</sup>
- Tier 2: General category covering skilled long term work visas
- Tier 3: Low-skilled workers (this tier has never been operational as the UK filled its needs for unskilled workers from those within the European Union and European Economic Area<sup>17</sup>)
- Tier 4: Student visas
- Tier 5: Short-term worker visas

With the exclusion of certain subcategories within Tier 1 and Tier 4, applicants must have a job offer from, and be sponsored by, an employer who is licensed by the UKVI.<sup>18</sup> Any person entering under the points-based migration system must not fall under any of the general grounds for refusal.<sup>19</sup> Nationals of certain countries must also register with the police. No one entering under the points-based system is entitled to recourse to public funds and many of the subcategories require the applicant to pay a healthcare surcharge.<sup>20</sup>

Under each category, applicants are granted a number of points if they meet certain criteria. There is a requirement that applicants in the Tier 1 and Tier 2 must be awarded 10 points for knowing the English language.<sup>21</sup> Ten points are awarded for applicants in most subcategories of Tiers 2, 4, and 5 who have maintenance funds that meet additional criteria regarding how the funds are held, the duration the funds have been held, and if proof of the funds is provided.<sup>22</sup> While there are different points allocated, the points assessment system has been described as “essentially symbolic”:

Each visa category specifies certain mandatory criteria which must all be satisfied to be eligible for a visa. Each of the criteria have a fixed number of points attached. There is no scope for flexibility over the number of points awarded, or the possibility to off-set points accrued in one category against those needed in another. Therefore, a person who satisfies the mandatory eligibility criteria will automatically accrue the number of points required, and a person who cannot satisfy one of the criteria will not have the number of points needed.<sup>23</sup>

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<sup>16</sup> Immigration Rules, *supra* note 6, ¶ 245B.

<sup>17</sup> Melanie Gower, *The UK's Points-Based System for Immigration* 13 (House of Commons Library Briefing Paper No. 7662, July 9, 2019), <https://perma.cc/4JBM-L2WS>.

<sup>18</sup> *UK Visa Sponsorship for Employers*, Gov.uk, <https://perma.cc/8LHZ-X3G8>. A list of sponsors is provided in Home Office, *Register of Sponsors Licensed Under the Points-Based System* (Jan. 28, 2020), <https://perma.cc/2FZG-F5WX>.

<sup>19</sup> Immigration Rules, *supra* note 6, Parts 6A & 9.

<sup>20</sup> *Id.* Appendix 2.

<sup>21</sup> *Id.* Appendix B.

<sup>22</sup> *Id.*

<sup>23</sup> Gower, *supra* note 17, at 6.

Entry into the UK under the points-based migration system does not provide citizenship to a person. The conditions of some of the visas granted may provide a pathway to citizenship by enabling the successful applicant to lawfully reside in the UK for the number of years required for them to obtain citizenship.

### A. Tier 1: Exceptional Talent Migrants

This tier is designed to contribute to the UK's growth and productivity.<sup>24</sup> It aims to ensure that the most highly skilled individuals and investors with substantial funds can qualify for entry and leave to remain in the UK. In order to enter under Tier 1, applicants must score at least 75 points. There are two categories within Tier 1:

- Exceptional Talent, “for exceptionally talented individuals in the particular fields, who wish to work in the UK. These individuals are those who are endorsed by a designated competent body as being internationally recognised at the highest level as world leaders in their particular field [referred to as exceptional talent], or who has demonstrated exceptional promise and are likely to become world leaders in their particular area [referred to as exceptional promise].”<sup>25</sup> Applicants that meet the criteria are awarded 75 points, which are the required points for entry under this subcategory.<sup>26</sup> Leave to remain may be granted for up to five years.<sup>27</sup> Designated competent bodies include the Royal Society, the Arts Council England, the British Academy, and the Royal Academy of Engineering.<sup>28</sup>
- Investor, for “high net worth individuals making a substantial financial investment to the UK.”<sup>29</sup> Substantial financial investment is currently referenced as £2 million (about US\$2.6 million). Applicants that meet these criteria are awarded 75 points, which are the required points for entry under this subcategory.<sup>30</sup> Leave to remain is granted for up to three years and may be extended for an additional two years.<sup>31</sup>

The UK closed the post-study work and general category under Tier 1, which allowed highly skilled workers to enter, or remain in, the UK without a job offer, in April 2012 and December 2010 respectively. The government determined that these categories were not effective in their objective of attracting highly skilled workers to the UK.<sup>32</sup>

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<sup>24</sup> Ian Macdonald, QC & Ronan Toal, *MacDonald's Immigration Law & Practice* ¶ 10.2. (7th ed., 2008).

<sup>25</sup> Immigration Rules, *supra* note 6, ¶ 245B.

<sup>26</sup> *Id.* Appendix A.

<sup>27</sup> *Id.* ¶ 245BC.

<sup>28</sup> *Id.* Appendix A. See also *Exceptional Talent Visa (Tier 1)*, Gov.uk, <https://perma.cc/56NR-5BQ7>.

<sup>29</sup> Immigration Rules, *supra* note 6, ¶ 245E.

<sup>30</sup> *Id.* Appendix A.

<sup>31</sup> *Id.* Appendix A, Table 7. See also *Investor Visa (Tier 1)*, Gov.uk, <https://perma.cc/2ZQD-BTCC>.

<sup>32</sup> Gower, *supra* note 17, at 10.

## B. Tier 2

### 1. (General): Skilled Workers

Tier 2 encompasses skilled workers that have a job offer in an area where there is a labor shortage in the UK,<sup>33</sup> as determined by the Migration Advisory Committee.<sup>34</sup> This category of general migrants is provided to “enable UK employers to recruit workers from outside the EEA to fill a particular vacancy that cannot be filled by a British or EEA worker.”<sup>35</sup>

There are limits as to how many visas may be granted under Tier 2 each year.<sup>36</sup> The restrictions are “designed to incorporate various protections for resident workers, such as by requiring the employer to first try to recruit from within the resident workforce.”<sup>37</sup> In order to obtain a visa under the Tier 2 category, the skilled worker must have a job offer from an employer within the UK that has been licensed by UKVI as a sponsor.<sup>38</sup>

The category was recently further restricted and is now limited to 20,700 people per year, which has been divided into monthly allocations, who must have a job offer for a position that requires a college degree.<sup>39</sup> This cap excludes individuals who earn £159,600 (about US\$207,000) or more per year; those within the subcategory of intracompany transfers; doctors or nurses; jobs specified at a doctorate level or above and listed in Appendix J of the Immigration Rules; and jobs connected with inward investment and in country applications.<sup>40</sup>

Applicants in the Tier 2 (general) subcategory must score a minimum of 70 points. These points must come from having: a sponsor and valid certificate of sponsorship that meet the requirements of the resident labor market test, or falls within an exemption for this test (30 points); the appropriate salary (20 points); the required English language skills<sup>41</sup> (10 points); and the required maintenance funds (10 points).<sup>42</sup>

Leave to remain may be granted for up to five years.<sup>43</sup>

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<sup>33</sup> Macdonald & Toal, *supra* note 24, ¶ 10.6. Occupations with shortages are listed in Appendix K of the Immigration Rules.

<sup>34</sup> *Migration Advisory Committee*, Gov.uk, <https://perma.cc/4VS2-H3K5>.

<sup>35</sup> Immigration Rules, *supra* note 6, ¶ 245H.

<sup>36</sup> Gower, *supra* note 17, at 3.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.* at 14.

<sup>39</sup> Immigration Rules, *supra* note 6, Appendix A, ¶ 82A.

<sup>40</sup> UK Visas & Immigration, *Tier 2 of the Points Based System – Policy Guidance* ¶ 55 (Oct. 2019), <https://perma.cc/MQX6-SA6C>.

<sup>41</sup> Immigration Rules, *supra* note 6, Appendix B.

<sup>42</sup> *Id.* Appendix C. See also UK Visas & Immigration, *supra* note 40, ¶¶ 60, 83.

<sup>43</sup> *Id.* ¶ 245HC.

## 2. Tier 2: Intra-company Transfers

The intra-company transfers tier enables “multinational employers to transfer their existing employees from outside the EEA to their UK branch for training purposes or to fill a specific vacancy that cannot be filled by a British or EEA worker.”<sup>44</sup> Within this tier are two subcategories in which applicants must meet the following attributes: long-term staff, who must earn £41,500 (about US\$54,000) or more per year or the “appropriate rate for the job . . . whichever is higher,”<sup>45</sup> and graduate trainees, who must earn £23,000 (about US\$30,000) or more per year or the “appropriate rate for the job . . . whichever is higher.”<sup>46</sup>

Applicants in the Tier 2 (intra-company transfer) subcategory must score a total of 60 points. They may be awarded 50 points for having a valid certificate of sponsorship from a licensed sponsor (30 points) and an appropriate salary (20 points), and have the required maintenance funds (10 points).<sup>47</sup>

Leave to remain varies according to the subcategory under which the employee is present in the UK, and may be granted for up to 12 months for those in the graduate trainee subcategory, up to five years for long-term staff that earn less than £120,000 (about US\$157,000) per year, and up to nine years for those who earn over this amount.<sup>48</sup>

## 3. Tier 2: Minister of Religion

Religious ministers are eligible to enter as a Tier 2 immigrant if they have been offered a job within a faith community in the UK and are employed by a licensed sponsor who has assigned the applicant a certificate of sponsorship that confirms the applicant will performing religious duties within, or directed by, the sponsor’s organization.<sup>49</sup> The sponsoring organization must ensure that there is no UK resident able to perform the role the Tier 2 applicant will fill, or confirm that the role is exempt from the test, and make sure that the applicants pay and conditions will be at least equal to settled workers in the same role.<sup>50</sup>

Applicants in the Tier 2 (Minister of Religion) subcategory must score a minimum of 70 points, which include the following: a sponsor and valid certificate of sponsorship (50 points); the required English language skills<sup>51</sup> (10 points); and the required maintenance funds (10 points).<sup>52</sup>

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<sup>44</sup> Id. ¶ 245G.

<sup>45</sup> Id. Appendix A, Table 11AA.

<sup>46</sup> Id. ¶ 245G & Appendix A, Table 11AA.

<sup>47</sup> Id. Appendix C. See also UK Visas & Immigration, *supra* note 40, at 16.

<sup>48</sup> Immigration Rules, *supra* note 6, ¶ 245GE. See also *Intra-Company Transfer Visa (Tier 2)*, Gov.uk, <https://perma.cc/5QHZ-CJ7J>.

<sup>49</sup> Immigration Rules, *supra* note 6, Appendix A, ¶ 92.

<sup>50</sup> Id.

<sup>51</sup> Id. Appendix B.

<sup>52</sup> Id. Appendix C. See also UK Visas & Immigration, *supra* note 40, ¶¶ 60, 83.

Leave to remain may be granted for up to three years in this subcategory.<sup>53</sup>

#### 4. Tier 2: Elite Sportspersons or Qualified Coaches

Elite sportspersons or qualified coaches may enter the UK under this subcategory if they are recognized and endorsed on their application by their sport's governing body for performing at the highest level of their profession internationally. Residing in the UK must help to develop the applicant's sport in the UK at the highest level. Leave to remain may be granted for up to three years for this subcategory, and may be extended for an additional three years up to a maximum of six years.<sup>54</sup>

Applicants in the Tier 2 (Sportsperson) subcategory must score a minimum of 70 points, which include the following: "has a valid certificate of sponsorship with a governing body endorsement and provides the letter issued by the governing body containing the endorsement"<sup>55</sup> (50 points); a sponsor and valid certificate of sponsorship (50 points); has the required English language skills<sup>56</sup> (10 points); and the required maintenance funds (10 points).<sup>57</sup>

#### C. Tier 3: Low-Skilled Workers

Tier 3 was designed to fill temporary low-skilled labor shortages. However, this tier has never been opened<sup>58</sup> after the UK determined that its low-skilled labor needs were being met by workers from within the European Union, who do not currently need to obtain a visa to enter and work in the UK.<sup>59</sup> The UK's departure from the EU means that it may reopen this visa subcategory in the future.

#### D. Tier 4: Students

In order to enter under Tier 4 as a general student, the student must show a confirmation of acceptance for studies, along with a reference number from an institution with a Tier 4 sponsor license that was issued within six months of the application being made and includes the personal details of the applicant and the specifications of the course, including the name, start and end dates, hours per week of study, and other details.<sup>60</sup> Maintenance funds must also be demonstrated, with the amount depending on the location and duration of study (10 points).<sup>61</sup>

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<sup>53</sup> Immigration Rules, *supra* note 6, ¶ 245HC.

<sup>54</sup> *Id.* ¶ 245HC & Appendix A ¶¶ 93-100.

<sup>55</sup> UK Visas & Immigration, *supra* note 40, at 79.

<sup>56</sup> Immigration Rules, *supra* note 6, Appendix B.

<sup>57</sup> *Id.* Appendix C. See also UK Visas & Immigration, *supra* note 40, ¶¶ 60, 83.

<sup>58</sup> Home Office, *User Guide to Home Office Immigration Statistics* (updated Nov. 28, 2019), <https://perma.cc/UKK8-EEF4>.

<sup>59</sup> *Id.*

<sup>60</sup> Immigration Rules, *supra* note 6, Appendix A, ¶ 116.

<sup>61</sup> *Id.* Appendix B.

Child students must show confirmation of acceptance for studies to an independent (not public) school issued by a Tier 4 (Child) student sponsor license within six months of the application being made.<sup>62</sup> Students must have a minimum of 40 points that are granted if the student has a confirmation of acceptance for studies from a licensed Tier 4 sponsor (30 points) and meets the maintenance fund requirements (10 points).<sup>63</sup>

### E. Tier 5: Temporary Workers

Admission into the UK for temporary workers is provided under Tier 5 of the system. The objective behind this part is to “satisfy cultural, charitable, religious or international objectives including volunteering and job shadowing, and for meeting seasonal employment needs in the edible horticultural sector.”<sup>64</sup>

There are seven subcategories in Tier 5, including visas for creative people, sportspersons, charity workers, religious workers, seasonal workers, and those on a government-authorized exchange program or under an international agreement.

To apply for a visa under almost all Tier 5 categories, the applicant must be over 18 years of age, have a job offer from a licensed sponsor (with no more than 14 days in breaks between employment if they have multiple jobs set up), have a valid Certificate of Sponsorship from this sponsor prior to applying for the visa, and have £945 (about US\$1,230) of maintenance funds, or an “A rated” sponsor who has certified that it will provide these funds, if necessary.<sup>65</sup> Applicants under Tier 5, other than those for the Youth Mobility Scheme, must score 40 points for having a valid certificate of sponsorship (30 points) and meeting the maintenance fund requirements (10 points).<sup>66</sup>

#### 1. Sportspersons

Sportspersons must have a certificate of sponsorship showing the person “has been endorsed in line with the published endorsement criteria by the Governing Body<sup>67</sup> for his sport” that confirms the player or coach is established internationally at the highest level and will contribute significantly to the development of their sport at the highest level in the UK that could not be done by a worker already settled in the UK.<sup>68</sup> Individuals entering under this subcategory may be granted leave to stay in the UK for up to 12 months.<sup>69</sup>

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<sup>62</sup> Id. Appendix A, ¶ 124.

<sup>63</sup> Home Office, *Tier 4 of the Points-Based System – Policy Guidance* ¶ 2, <https://perma.cc/6TH8-ETYG>.

<sup>64</sup> Immigration Rules, *supra* note 6, ¶ 245ZM

<sup>65</sup> Id. Appendix C.

<sup>66</sup> Home Office, *Tier 5 (Temporary Worker) of the Points-based System* (Vers. 19.0, Mar. 8, 2019), <https://perma.cc/FZU4-ZRNS>.

<sup>67</sup> Recognized governing bodies are set out in Appendix M of the Immigration Rules.

<sup>68</sup> Immigration Rules, *supra* note 6, Appendix A, ¶ 110(a).

<sup>69</sup> Id. ¶ 245ZP.

## 2. *Creative Workers*

Creative workers must be sponsored and their sponsors must comply with the relevant code of practice contained in Appendix J of the Immigration Rules, unless the job the applicant is filling is on the shortage occupation list, contained in Appendix K of the Immigration Rules. In cases where neither of these criteria apply the sponsor must have “taken into account the needs of the resident labour market in that field, and the work could not be carried out by a suitable settled worker.”<sup>70</sup> Individuals entering under this subcategory may be granted leave to stay in the UK for up to 12 months.<sup>71</sup>

## 3. *Charity Workers*

Charity workers must be issued a certificate of sponsorship that shows the applicant will be engaged in voluntary fieldwork that directly contributes to the achievement or advancement of the sponsor’s charitable purpose, must not be paid or receive remuneration in anyway, and must not fill a permanent position, even on a temporary basis.<sup>72</sup> Individuals entering under this subcategory may be granted leave to stay in the UK for up to 12 months.<sup>73</sup>

## 4. *Religious Workers*

Religious workers must be sponsored to perform religious duties either within, or directed by, the sponsor’s organization and can cover non-pastoral work, but not work that would be conducted by a minister of religion.<sup>74</sup> The applicant must be a member of the sponsor’s organization, which must be a religious organization, and must receive pay and conditions that a settled worker would receive in the role the applicant will perform. The sponsor must also show that the position is exempt from the resident labor market test, or include details of how they have complied with the test to ensure a settled worker in the UK could not fill the role the applicant is seeking to work in.<sup>75</sup> Individuals entering under this subcategory may be granted leave to stay in the UK for up to two years.<sup>76</sup>

## 5. *Government-Authorized Exchange*

The government-authorized exchange subcategory was established to enable individuals to enter the UK for a short period of time for work experience, training, to complete an overseas government language program, research, or for a fellowship that must occur through an approved government-authorized exchange program.<sup>77</sup> Applicants seeking to enter the UK

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<sup>70</sup> Id. Appendix A, ¶ 110(b).

<sup>71</sup> Id. ¶ 245ZP.

<sup>72</sup> Id. Appendix A, ¶ 110(c).

<sup>73</sup> Id. ¶ 245ZP.

<sup>74</sup> Id. Appendix A, ¶ 110(d).

<sup>75</sup> Id.

<sup>76</sup> Id. ¶ 245ZP.

<sup>77</sup> *Temporary Worker - Government Authorised Exchange Visa (Tier 5)*, Gov.uk, <https://perma.cc/8JFN-NP75>.

under this subcategory must be sponsored, meet a minimum skill level,<sup>78</sup> and meet the requirements of the specific exchange program the individual is entering into.<sup>79</sup> Individuals entering under this subcategory for work experience may be granted leave to remain in the UK for up to 12 months. Individuals entering under this subcategory to enter into a research program, training program, or overseas government language program may be granted leave to stay in the UK for up to two years.<sup>80</sup>

#### 6. *Seasonal Worker*

Seasonal workers may enter the UK in this subcategory for up to six months<sup>81</sup> to undertake seasonal work in the edible horticultural sector, provided they are sponsored by an approved organization listed in Appendix U of the Immigration Rules. Seasonal workers receive the same protections as settled UK workers in terms of worker's rights and working hours.<sup>82</sup>

#### 7. *International Agreement*

Those seeking to enter the UK to work temporarily as part of an international agreement include those working for an international organization or foreign government, those contracted to provide services to the sponsor under the General Agreement on Trade in Services or other trade agreement with the UK, and private servants in diplomatic households. Workers under this subcategory must be sponsored by a licensed employer. Workers in this subcategory may stay for up to two years, or the time frame listed by the worker's sponsor.<sup>83</sup>

### **F. Tier 5: Youth Mobility Scheme**

The Tier 5 youth mobility scheme allows individuals between 18-30 years of age from certain countries to live and work in the UK for up to two years. This time may not be extended. While in the UK, the individual may study, work, and be self-employed and set up a company, provided they do not hire any employees, that any premises used is rented, and any equipment used does not exceed £5,000 (about US\$6,500) in value.<sup>84</sup> Applicants under this subcategory must provide evidence that they have sufficient ability to maintain themselves by showing a bank balance of at least £1,890 (about US\$2,500) to support themselves during their stay.<sup>85</sup>

This program only applies to residents of certain countries, and there are restrictions on the number of places allotted to each country participating under the program. For 2020, the limits are:

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<sup>78</sup> The minimum skill level required is set out in Appendix J of the Immigration Rules.

<sup>79</sup> The requirements are set out in Appendix N of the Immigration Rules.

<sup>80</sup> Immigration Rules, *supra* note 6, ¶ 245ZP.

<sup>81</sup> *Id.* ¶ 245ZM.

<sup>82</sup> *Id.* Appendix A, ¶ 110(ea).

<sup>83</sup> *Id.* ¶ 245ZP.

<sup>84</sup> *Id.* ¶ 245ZL.

<sup>85</sup> *Youth Mobility Scheme Visa (Tier 5)*, Gov.uk, <https://perma.cc/38CM-LTSQ>.

- Australia—31,000 places
- New Zealand—14,000 places
- Canada—6,000 places
- Japan—1,000 places
- Monaco—1,000 places
- Hong Kong—1,000 places
- South Korea—1,000 places.<sup>86</sup>

Applicants under this subcategory must score 50 points in total across the following categories: meeting the nationality requirement of the program (30 points); meeting the age requirements (10 points); and meeting the maintenance requirement (10 points).<sup>87</sup>

Unlike the majority of other subcategories, individuals entering under this one may not bring dependents, and applicants must not have any children under the age of 18 years who are either living with them or for whom they are financially responsible.<sup>88</sup>

#### IV. Sponsor Responsibilities

As noted above, to help tie in sponsoring employers to immigration enforcement, the sponsors have a number of duties. They are responsible for keeping records of the applicant's passport, immigration documents, and contact details. They are obliged to report any person they sponsor to UKVI if

- the worker does not show for work on his or her first day,
- the worker is absent from work for more than ten working days without permission,
- the job has ended for any reason,
- the sponsorship stops for any reason, and
- the worker has any change in circumstances, such as a change of job.<sup>89</sup>

Notification requirements also arise if the sponsor believes a worker is breaching the conditions of his or her immigration status or if the sponsor believes the employee is engaging in criminal or terrorist activity.<sup>90</sup>

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<sup>86</sup> Immigration Rules, *supra* note 6, Appendix G.

<sup>87</sup> Id. Appendix A, B & C. See also Home Office, *Tier 5 (Youth Mobility Scheme)* (Vers. 13.0, Apr. 1, 2019), <https://perma.cc/53KP-7ASB>.

<sup>88</sup> Immigration Rules, *supra* note 6, ¶ 245ZK.

<sup>89</sup> Home Office, *Tiers 2 and 5: Guidance for Sponsors* ¶ 15.5 (Oct. 2019), <https://perma.cc/U8Q5-WE2A>.

<sup>90</sup> Id. ¶ 60.

## V. Family Reunification

The law allows for dependent family members to join individuals in the UK under the points-based system for most subcategories in each of the above tiers.<sup>91</sup> As noted above, individuals may not bring dependent family members if they have been granted leave to enter the UK under the youth mobility subcategory of Tier 5 or under the Tier 4 child student subcategory.<sup>92</sup>

Dependent family members include husbands, wives, civil partners, unmarried partners, same-sex partners, and children under 18 years of age.<sup>93</sup> Children over 18 years of age who have not previously been granted leave as a dependent family member, parents, and grandparents are not eligible to join their family members under the points-based system.<sup>94</sup> Children under 18 years of age who are married or in a civil partnership, or those who have formed an independent family unit or established an independent life, are also not eligible to enter the UK as a dependent.<sup>95</sup>

In order to be granted entry clearance as a dependent, the person must not fall under any of the general grounds for refusal or have entered the UK illegally.<sup>96</sup> The following people can apply as a dependent family member for a person present in the UK under the points-based system (PBS):

- the family member of a person with, or applying for, leave under Tiers 1, 2, 4 or 5 of PBS
- the spouse or partner of a person with indefinite leave to remain (ILR) or British citizenship who last held leave as a Tier 1, 2, or 5 PBS migrant and do not yet qualify for indefinite leave to remain
- the child of a person with ILR or British citizenship who last held leave as a Tier 1, 2, or 5 PBS migrant, and:
  - their other parent does not yet qualify for ILR
  - they last held leave as the family member of a PBS migrant granted under the rules in place on or after 9 July 2012.<sup>97</sup>

In order for dependent children to obtain leave to enter the UK, both of the parents must be lawfully present in the UK and not as a visitor, unless the parent in the UK is the sole surviving parent or has sole responsibility for raising the child or there are other “serious or compelling family or other considerations which would make it desirable not to refuse the application and suitable arrangements have been made in the UK for the applicant’s care.”<sup>98</sup>

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<sup>91</sup> UK Visas & Immigration, *Skilled Workers and Students (Dependents) - Policy Guidance* (Mar. 2019), <https://perma.cc/J3VT-7DFP>.

<sup>92</sup> Home Office, *Dependant Family Members of Points-Based System Migrants and Appendix W Workers 35* (Vers. 17.0, Sept. 9, 2019), <https://perma.cc/MFZ3-592E>

<sup>93</sup> Id.; Immigration Rules, *supra* note 6, Part 8.

<sup>94</sup> Home Office, *supra* note 92, at 8.

<sup>95</sup> UK Visas & Immigration, *supra* note 91, ¶ 122.

<sup>96</sup> Immigration Rules, *supra* note 6, ¶ 319C(a).

<sup>97</sup> Home Office, *supra* note 92, at 7.

<sup>98</sup> UK Visas & Immigration, *supra* note 91, ¶ 6.

Leave to enter for dependents is granted with the same expiration date as the family member who has received leave to enter the UK under the points-based system or, in the case of children, the date of the parent whose leave expires first.<sup>99</sup>

In almost all instances, there is a requirement that workers and dependents must have enough financial resources to be able to maintain themselves as a condition of entry as there is no recourse to public funds. If the applicant does not have enough money to support themselves and their dependents, known as a maintenance fund, it can result in financial hardship.<sup>100</sup> Maintenance funds must be cash funds and the applicants must provide evidence of their existence.<sup>101</sup>

The financial requirements for bringing dependents vary according to the tier and subcategory the original applicant is in and how long they have been in, and been granted permission to remain in, the UK. For example, individuals in Tier 1 who are not in the investors or exceptional talent subcategories must show they have £1,890 (about US\$2,500) for each dependent in addition to the £945 (about US\$1,230) required for their own support.<sup>102</sup> Applicants in the Tier 2 general subcategory and Tier 5 must be able to demonstrate that any dependents joining them will be supported, and this must be evidenced by showing £630 (about US\$820) per dependent in savings available to them that must have been in the applicant or dependent's bank account for a minimum of 90 days prior to the application being made. This requirement may be waived if the sponsor provides the applicant with a certificate of sponsorship stating that they will provide each dependent with £630 to enable them to cover their costs for a month should they require it. It may also be waived if the sponsor of the applicant present as a Tier 2 general worker is an "A rated" sponsor.<sup>103</sup>

Dependents of students may come to the UK if the student is a government-sponsored student on a full-time course that will last longer than six months, or is on a postgraduate level course for nine months or more and sponsored by a body specified in the Immigration Rules.<sup>104</sup> There are further restrictions on granting a visa under these provisions if the dependent has been granted entry clearance as a visitor, short-term student, or has been on temporary admission, temporary release, or immigration bail.<sup>105</sup> The financial requirements they must show vary according to where the applicant will be located and how long they will be present in the UK for, up to a maximum of nine months.<sup>106</sup>

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<sup>99</sup> Id. ¶ 45.

<sup>100</sup> Immigration Rules, *supra* note 6, ¶¶ 319C, 319H & Appendix E; UK Visas & Immigration, *supra* note 92, ¶ 69.

<sup>101</sup> Home Office, *supra* note 92, at 36.

<sup>102</sup> UK Visas & Immigration, *supra* note 91, ¶ 72.

<sup>103</sup> Home Office, *supra* note 92, at 33.

<sup>104</sup> UK Visas & Immigration, *supra* note 91, ¶ 51.

<sup>105</sup> Id. ¶ 52.

<sup>106</sup> Home Office, *supra* note 92, at 36.

## VI. Criticisms of the System

The points-based system, in operation for close to two decades, has faced criticism with respect to a number of areas. The limit on the number of visas issued under the Tier 2 (general) subcategory has been challenged as being a “fundamental issue” with the points-based migration program, with the number of people seeking to sponsor skilled workers exceeding the number of visas available since December 2017.<sup>107</sup> Others have argued that a policy to reduce net migration to the UK through caps has resulted in the system becoming rigid and not fit for purpose:

... the tinkering with what was a flexible system has culminated in a system which is anything but points based. All supply side logic has dissipated, the admission system is now rigid, high skilled immigration has all but disappeared from Britain’s knowledge economy, and far from enhancing tourism as the design of the PBS was intended, the tier five visitor visa has become so convoluted it is labyrinthine in its complexity.<sup>108</sup>

A House of Commons Library Briefing Paper noted the system has been criticized for

[f]ail[ing] to live up to its stated objectives such as simplicity, transparency, objectivity and flexibility. It has come to be widely regarded by individual applicants, sponsors, immigration lawyers and the judiciary as unduly complex, burdensome, costly and ill-suited to the needs of its users.<sup>109</sup>

While the Immigration Rules were designed to have the flexibility to be changed quickly in response to the UK’s needs, these changes have led to uncertainty for users and have been described as “extremely lengthy and prescriptive.”<sup>110</sup>

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<sup>107</sup> Gower, *supra* note 17, at 4.

<sup>108</sup> Erica Consterdine, *Comment: How the Coalition Effectively Scrapped Points-Based Immigration*, Politics.co.uk (Mar. 25, 2015), <https://perma.cc/D679-25CL>.

<sup>109</sup> Gower, *supra* note 17, at 4.

<sup>110</sup> *Id.*