

Highly Skilled Migrant Programme (HSMP) Forum Judicial Review Indefinite Leave to Remain Judgment of 6 April 2009

Introduction

When it was launched in January 2002, the highly skilled migrant programme (HSMP) was heralded as a new migration route for people to come to the UK. It was designed for highly skilled persons who had the skills and experience required by the UK to compete in the global economy.

Four years later, after proving to be a huge success, the scheme was modified and changes were implemented which had a retrospective effect. One change in particular was made on 3 April 2006, which increased the qualifying period for indefinite leave to remain (ILR) from 4 to 5 years. On 7 November 2006 new qualifying criteria were also introduced, including a mandatory English language requirement.

Judicial Review – 8 April 2008

Following vociferous protestation from stakeholders and those adversely affected by these new requirements, an application for Judicial Review was brought against the Secretary of State who was required to justify the reasoning behind the retrospective changes in the High Court.

On 8 April 2008, judgment was made in favour of the HSMP Forum (claimant) in which it was concluded that the Secretary of State had acted unlawfully in applying the changes to the programme set out in the Immigration Rules to people who had already been approved under the HSMP under the requirements in place before 7 November 2006.

Recent Judicial Review – 6 April 2009

In response to this decision in 2008, a policy document was issued by the Secretary of State. Almost exactly one year later, this document was successfully challenged for its unlawful shortcomings.

The two key elements to the policy document under scrutiny comprised of an earlier change to the HSMP which increased the qualifying period for settlement (ILR) from four to five years (mentioned above) in addition to the subsequent decision-making by the Secretary of State to refuse applications for settlement on the basis of four years on the scheme and to inform such applicants that their continued presence here was unlawful and therefore the applicant was liable to removal.

On 6 April 2009, the High Court of Justice once again ruled in favour of the HSMP Forum Judicial Review and decided that the Government's decision to increase the requirement for ILR from 4 to 5 years was unjust. The court concurred that migrants who were admitted to the HSMP scheme prior to 3 April 2006 should benefit from the expectation that they would be eligible to apply for ILR after 4 years.

The Court Order (of 8 April 2009) resulting from this decision requires the UK Border Agency to implement the judgment within 42 days (on or by 20 May 2009).

The UK Border Agency has requested that individuals who believe they are affected by these changes refrain from submitting an application based on the outcome of the Judicial Review until the policy and procedures have been finalised and published on the website.

However, if the leave of a highly skilled migrant is due to expire before the policy document has been published, an in-time application for ILR should be submitted clearly indicating that it is an application following the ILR judgment of 6 April 2009. Decision-making on such applications will be suspended until the final policy document is published (on or by 20 May 2009).

Laura Devine Solicitors

Laura Devine Solicitors is a leading immigration firm, ranked in the top tier of the Legal 500 and Chambers directories, and advises on all aspects of UK and US immigration and nationality law. Should you have any queries on the above or any other immigration matter, please contact a member of the team.

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