

START-UP AND INNOVATOR: NEW CATEGORIES FOR MIGRANTS

IS THE UK STILL OPEN FOR BUSINESS?

30 April 2019

Elena Tsirlina

Charles Douglas Solicitors LLP

DATES FOR YOUR DIARY

The Government introduced new Start-up and Innovator categories on 29 March 2019. These categories replaced Tier 1 (Graduate Entrepreneur) and Tier 1 (Entrepreneur) categories. Tier 1 (Entrepreneur) category was closed on 29 March 2019.

Extension applications for Tier 1 (Entrepreneur) migrants will remain open until 5 April 2023 and settlement applications until 5 April 2025.

Tier 1 (Graduate Entrepreneur) migrants apply on the basis of endorsement letters. These are valid for three months. Endorsing bodies could issue endorsement letter until 5 April 2019. Applications in this category will continue until 5 July 2019. Tier 1 (Graduate Entrepreneur) migrants will continue to be able to switch into the Tier 1 (Entrepreneur) category until 5 July 2021. Transitional arrangements will allow for Tier 1 (Entrepreneur) extension applications to be made by these migrants until 5 July 2025 and settlement applications until 5 July 2027.

PURPOSE

Start-up and Innovator categories are for people wishing to establish a business in the UK. More specifically, the Start-up category is for people seeking to set up a business in the UK for the first time. The Innovator category is for more experienced entrepreneurs wishing to set up or run a business in the UK. Endorsement of applicants by UK endorsing bodies such as business accelerators, seed competitions and government agencies, as well as higher education providers is an integral part of the application process. These endorsing bodies will assess applicants' business ideas against qualifying criteria of innovation, viability and scalability.

Changes have also been made to the standard visitor category allowing prospective entrepreneurs who can show support from one or more endorsing bodies for the Start-up and Innovator categories to come to the UK for discussions to secure funding from any legitimate source which they intend to use to set up a business in the UK. Once funding has been secured, applicants must apply for a Start-up or Innovator visa before undertaking any work as an entrepreneur in the UK. A visitor who has been undertaking permitted activities as a prospective entrepreneur will be able to switch into Start-up and Innovator categories.

The new worker categories are set out in Appendix W of the Immigration Rules. Amendments relating to prospective entrepreneurs have been made in Appendix V of the Immigration Rules.

CONCERNS

- Unlike its predecessors, the Start-up and Innovator categories do not form part of the Points Based System and are discretionary.
- Applicants are not required to score points. Instead, they must meet general and specific requirements. The endorsement criteria and process are opaque (in part akin to the genuineness test). Each endorsing body has different programmes and processes in place.
- Endorsing bodies provide little or no information about the type of applications they accept for consideration. It is expected that they will start endorsing applications by September 2019. However, this has not been universally confirmed, when contacted.
- As with other immigration categories, applications can be refused and leave can be curtailed. However, there is no defined endorsement review should an endorsing body refuse your application. Also, there is no right of appeal against a refusal. This will leave applicants and their businesses vulnerable.

ENDORISING BODIES

In order to make an application in the Start-up and Innovator categories, applicants must have their business or business idea endorsed by an approved body. Lists of endorsing bodies for both categories were published on 29 March 2019. To be added to the list, an organisation must be approved by the Home Office against the following criteria:

- the organisation must be a UK higher education institution or must demonstrate a proven track record of supporting UK entrepreneurs, including resident workers
- the request to become an endorsing body must be supported by a UK or devolved government department as being clearly linked to the department's policy objectives
- the organisation must be able to competently assess business ventures against the endorsement criteria
- the organisation must agree to abide by a number of responsibilities including staying in contact with those it has endorsed and reporting to the Home Office at certain checkpoints
- the organisation must not be connected to past or present abuse of the immigration system

PERIOD OF GRANT

Start-up

Initial applications: 2 years

Extension applications: 2 years including any time spent in Tier 1 (Entrepreneur) and Start-up categories

Settlement applications: not applicable

Maximum time in category: 2 years

Innovator

Initial applications: 3 years

Extension applications: 3 years

Settlement applications: 3 years

Maximum time in category: no time limit

SWITCHING – ELIGIBLE CATEGORIES

Start-up

- Tier 1 (Graduate Entrepreneur)
- Tier 2
- Tier 4 (General) (subject to restrictions)
- Prospective entrepreneur (standard visitor)

Innovator

- Start-up
- Tier 1 (Graduate Entrepreneur)
- Tier 1 (Entrepreneur)
- Tier 2
- Prospective entrepreneur (standard visitor)

WHAT YOU CAN DO

Start-up

- **Bring family members to the UK (partner and child under the age of 18)**
- **Switch into this category from another eligible switching category**
- **Work in another job while also working for your business**

Innovator

- **Set up a business or several businesses**
- **Switch into this category from another eligible switching category**
- **Work for your business as a director, a self-employed person or a member of a business partnership**
- **Bring family members to the UK (partner and child under the age of 18)**

WHAT YOU CANNOT DO

Start-up

- **Get public funds**
- **Work as a doctor or dentist in training**
- **Work as a professional sportsperson**
- **Settle in the UK**

Innovator

- **Get public funds**
- **Work as a doctor or dentist in training**
- **Work as a professional sportsperson**
- **Work outside your business**

GENERAL REQUIREMENTS - ENTRY CLEARANCE AND LEAVE TO REMAIN

- **Documents: evidential flexibility**
- **Age: applicants must be at least 18 years old**
- **Immigration status in the UK: prior entry clearance is mandatory and if applying for leave to remain, the last period of leave must be in the same category as they are applying in or the last grant of leave was in one of the eligible switching categories**
- **Restrictions for Tier 4 (General) students applying in the UK: (a) the applicant must have been sponsored as a Tier 4 (General) student by a UK recognised body or a body in receipt of public funding, an overseas higher education institution, an embedded college offering pathway courses or an independent fee paying school; (b) if the applicant was sponsored for their studies in the UK by a government or international scholarship agency, and the sponsorship is ongoing or ended less than 12 months before the date of application, the applicant must have been granted unconditional written consent**

GENERAL REQUIREMENTS - ENTRY CLEARANCE AND LEAVE TO REMAIN

- **Breach of immigration laws:** the applicant must not be in the UK in breach of immigration law save for any current period of overstaying
- **General grounds for refusal:** the applicant must not fall for refusal under the general grounds for refusal
- **Credibility assessment:** the applicant must genuinely intend to undertake and is capable of undertaking any work or business activity in the UK, does not intend to work in the UK in breach of their conditions and any money which the applicant claims to be available is genuinely available as described. This provision also sets out what the decision maker will take into account and what other information or documents the decision maker may request as part of the credibility assessment
- **English language:** the applicant must have a B2 level of English language. This can be satisfied in one of four ways: the applicant is a national of a majority English speaking country, has a degree taught in English, has passed a Secure English Language Test, or met the same requirement in a previous successful application

GENERAL REQUIREMENTS - ENTRY CLEARANCE AND LEAVE TO REMAIN

- **Maintenance funds:** the applicant must have at least £945 held in the account for a consecutive 90 days ending no earlier than 31 days before the date of application (family members must have at least £630 each held for the same period)

GENERAL REQUIREMENTS – INDEFINITE LEAVE TO REMAIN

- **Documents: evidential flexibility**
- **KoLL: the applicants must have sufficient knowledge of the English language and about life in the UK**
- **Breach of immigration laws: the applicant must not be in the UK in breach of immigration law save for any current period of overstaying**
- **General grounds for refusal: the applicant must not fall for refusal under the general grounds for refusal**
- **Continuous residence: the applicant must have spent a continuous period lawfully in the UK**
- **Absences from the UK: absences totalling 180 days or less during any consecutive 12 months during the period of valid leave will not break the continuous period**

SPECIFIC REQUIREMENTS – START-UP

- **Endorsement:** all applicants for entry clearance or leave to remain must have been endorsed by an endorsing body. The applicant must provide an endorsement letter issued by the endorsing body. The applicant does not need to be the sole founder of the business and may be a member of an entrepreneurial team. If the applicant's last grant of leave was in the Tier 1 (Graduate Entrepreneur) or Start-up category, the endorsement does not need to be from the same endorsing body as the previous endorsement. The endorsing body must not have withdrawn the endorsement by the time the application is considered
- **Endorsement criteria:** the business venture must be innovative, viable and scalable and the endorsing body is reasonably satisfied that the applicant will spend the majority of their working time in the UK on developing business ventures

SPECIFIC REQUIREMENTS - INNOVATOR

- **Endorsement:** all applicants for entry clearance, leave to remain or indefinite leave to remain must have been endorsed in this category by an endorsing body. The applicant must provide an endorsement letter issued by an endorsing body. If the endorsement is under the new business criteria, the applicant will not need to provide the evidence for any investment funds where the endorsement letter confirms that the endorsing body is providing the funds, has verified that the funds are available from other sources and has verified that the funds have already been invested in the business. The applicant does not need to be the sole founder of the business and may be a member of an entrepreneurial team. If the applicant's last grant of leave was in the Tier 1 (Graduate Entrepreneur), Start-up or Innovator category, the endorsement does not need to be from the same endorsing body as the previous endorsement. The endorsing body must not have withdrawn the endorsement by the time the application is considered.

SPECIFIC REQUIREMENTS - INNOVATOR

New business:

- The application is an initial application
- The application is an extension application and the applicant is pursuing a different business venture from the one previously assessed

Same business:

- The applicant's last grant of leave was in the Tier 1 (Graduate Entrepreneur), Start-up or Innovator category
- The applicant is pursuing the same business venture that was previously assessed

Endorsement criteria: the business venture must be innovative, viable and scalable and the endorsing body is reasonably satisfied that the applicant will spend the majority of their working time in the UK on developing business ventures

SPECIFIC REQUIREMENTS - INNOVATOR

Investment funds (new business)

- **at least £50,000 must be available to the applicant (may include funds already invested in the business) and no further evidence is needed if the same is confirmed in the endorsement letter. If not confirmed then the applicant must provide evidence of investment funds**
- **members of an entrepreneurial team cannot share the same investment funds. There must be at least £50,000 available for each team member (with the exception of resident workers or those who have leave under another category which allows them to engage in business)**

SPECIFIC REQUIREMENTS - INNOVATOR

Evidence of investment funds (new business)

- **If any of the funds are available from a UK organisation which employs at least 10 people, the applicant must provide a letter from that organisation**
- **If any of the funds are available from an overseas organisation, a UK organisation which employs less than 10 people, or an individual person, the applicant must provide a signed declaration from the funding provider dated no earlier than 3 months before the date of application, a letter from a legal representative and a bank letter confirming that the funds are held in a regulated financial institution.**
- **If any of the funds are held by the applicant, the applicant must provide bank statements covering a consecutive 3 months or a bank letter dated no earlier than 1 month**

SPECIFIC REQUIREMENTS - INNOVATOR

Evidence of investment funds (new business)

- **If any of the funds have already been invested in the applicant's business, the applicant must provide business accounts or business bank statements**

SPECIFIC REQUIREMENTS - INNOVATOR

Endorsement criteria (same business)

If the applicant is relying on endorsement under the same business criteria, the endorsement letter must confirm the following:

- **The applicant has shown significant achievements, judged against the business plan assessed in their previous endorsement**
- **The applicant's business is registered with Companies House and the applicant is listed as a director or member of that business**
- **The business is active and trading**
- **The business appears to be sustainable for at least the following 12 months, based on its assets and expected income**
- **The applicant has demonstrated an active key role in the day-to-day management and development of the business**

SPECIFIC REQUIREMENTS - INNOVATOR

Endorsement criteria (settlement)

- **Members of an entrepreneurial team cannot share the same means of meeting the endorsement criteria**
- **The applicant must meet all of the aspects of the same business endorsement criteria (see above)**
- **The applicant's business venture meets at least two of the following requirements:**
 - **At least £50,000 has been invested into the business and actively spent**
 - **The number of the business' customers has at least doubled within the most recent 3 years and is currently higher than the mean number of customers for other UK businesses offering comparable main products or services**
 - **The business has engaged in significant research and development activity and has applied for intellectual property protection in the UK**

SPECIFIC REQUIREMENTS - INNOVATOR

Endorsement criteria (settlement)

- **The business has generated a minimum annual gross revenue of £1 million in the last full year covered by its accounts**
- **The business is generating a minimum annual gross revenue of £500,000 in the last full years covered by its accounts, with at least £100,000 from exporting overseas**
- **The business has created the equivalent of at least 10 full-time jobs for resident workers (these must have existed for at least 12 months and involved at least 30 hours of paid work per week)**
- **The business has created the equivalent of at least 5 full-time jobs for resident workers which have an average salary of at least £25,000 a year (these must have existed for at least 12 months and involved at least 30 hours of paid work per week)**

APPLICATIONS – PRACTICAL ASPECTS

- **Application costs**
- **Process for in and out of country applications**
- **Processing times in and out of country**

Q & A

Charles Douglas Solicitors LLP
32 Old Burlington Street
London
W1S 3AT
Tel: 020 7758 8170
Email: elenatsirlina@cdsmayfair.com

Innovator endorsing bodies

This page provides a list of all the authorised endorsing bodies that can issue endorsements for Innovator visas.

An organisation can only issue an endorsement if it is on this list. If you have been offered an endorsement by an organisation that is not on the list, you can report it at <https://www.gov.uk/report-immigration-crime>.

Innovator endorsing bodies

- [The Bakery](#)
- [Seed Camp](#)
- [Invest Northern Ireland](#)
- [Zinc](#)
- [Deep Science Ventures](#)
- [Wayra](#)
- [Ignite](#)
- [Bethnal Green Ventures](#)
- [Codebase](#)
- [Capital Enterprise](#)
- [Cylon](#)
- [Tech X](#)
- [Seed Haus'](#)
- [Med City](#)
- [Scottish Edge](#)
- [Royal Society Edinburgh](#)
- [Tech Nation](#)
- [NatWest Entrepreneur Accelerator](#)
- [Royal Bank of Scotland Entrepreneur Accelerator](#)
- [Ulster Bank Entrepreneur Accelerator](#)
- [Set Squared Bristol](#)
- [Set Squared Exeter](#)
- [Set Squared Southampton](#)
- [Set Squared Surrey](#)

Start Up endorsing bodies

This page provides a list of all the authorised endorsing bodies that can issue endorsements for Start-up visas. An organisation can only issue an endorsement if it is on this list. If you have been offered an endorsement by an organisation that is not on the list, you can report it at <https://www.gov.uk/report-immigration-crime>.

Start-up endorsing bodies

[List of business endorsing bodies](#)

[List of Higher Education Institution \(HEI\) endorsing bodies](#)

Start Up

Business endorsing bodies

- [The Bakery](#)
- [Seed Camp](#)
- [Invest Northern Ireland](#)
- [Zinc](#)
- [Deep Science Ventures](#)
- [Wayra](#)
- [Ignite](#)
- [Bethnal Green Ventures](#)
- [Codebase](#)
- [Capital Enterprise](#)
- [Cylon](#)
- [Tech X](#)
- [Seed Haus'](#)
- [Med City](#)
- [Scottish Edge](#)
- [Royal Society Edinburgh](#)
- [Tech Nation](#)
- [NatWest Entrepreneur Accelerator](#)
- [Royal Bank of Scotland Entrepreneur Accelerator](#)
- [Ulster Bank Entrepreneur Accelerator](#)
- [Set Squared Bristol](#)
- [Set Squared Exeter](#)
- [Set Squared Southampton](#)
- [Set Squared Surrey](#)

HEI endorsing bodies

- Anglia Ruskin University
- Arts University Bournemouth
- Aston University
- Bangor University
- Bath Spa University
- Birmingham City University
- Bournemouth University
- BPP University Limited
- Brunel University London
- Cardiff Metropolitan University
- Cardiff University
- City, University of London
- Contemporary Dance Trust
- Coventry University
- Cranfield University
- De Montfort University
- Edinburgh Napier University
- Falmouth University
- Florida State University International Programs Association UK
- Girne American University Canterbury
- Glasgow Caledonian University
- Goldsmiths University of London
- Guildhall School of Music & Drama
- Heriot-Watt University

- Imperial College London
- Keele University
- King's College London
- Kingston University
- Lancaster University
- Leeds Arts University
- Leeds Beckett University
- Liverpool John Moores University
- London Business School
- London Metropolitan University
- London School of Economics and Political Science
- London South Bank University
- Loughborough University
- Manchester Metropolitan University
- Middlesex University
- Newcastle University
- Northern School of Contemporary Dance
- Norwich University of the Arts
- Nottingham Trent University
- Oxford Brookes University
- Plymouth College of Art
- Queen Mary University of London
- Queen's University Belfast
- Ravensbourne University London
- Regent's University London
- Roehampton University
- Royal Academy of Music
- Royal Agricultural University
- Royal College of Art
- Royal Holloway and Bedford New College
- Sheffield Hallam University
- SOAS, University of London
- Solent University
- Swansea University
- Teesside University
- The Liverpool Institute for Performing Arts
- The Robert Gordon University
- The Royal Central School of Speech and Drama
- The University of Buckingham
- The University of Cambridge
- The University of Northampton
- The University of Salford
- The University Of Sheffield
- The University of West London
- University College London
- University for the Creative Arts
- University of Aberdeen
- University of Bath
- University of Birmingham
- University of Bradford
- University of Brighton
- University of Bristol
- University of Central Lancashire
- University of Chester
- University of Dundee
- University of Durham
- University of East Anglia
- University of East London
- University of Edinburgh
- University of Essex
- University of Exeter
- University of Glasgow
- University of Greenwich
- University of Hertfordshire Higher Education Corporation
- University of Huddersfield
- University of Hull
- University of Kent
- University of Leeds
- University of Leicester
- University of Lincoln
- University of Liverpool
- University of Manchester
- University of Northumbria at Newcastle
- University of Nottingham
- University of Oxford
- University of Plymouth
- University of Portsmouth

- University of Reading
- University of South Wales
- University of Southampton
- University of St Andrews
- University of Stirling
- University of Strathclyde
- University of Sunderland
- University of Surrey
- University of Sussex
- University of the Arts London
- University of the West of England
- University of the West of Scotland
- University of Ulster
- University of Wales Trinity Saint David - Carmarthen Campus
- University of Warwick
- University of Westminster
- University of Wolverhampton
- University of York
- York St John University