

The MAC Secretariat
Migration Advisory Committee
3rd Floor
Seacole Building
2 Marsham Street
London
SW1P 4DF

Telephone: 020 7035 8117/ 1764
mac@homeoffice.gsi.gov.uk

10th June 2015

Dear MAC

Re: Tier 1 (Entrepreneur) Call for evidence

I have worked with a large number of Entrepreneurs, and their backers/investors. My clients have been involved in businesses including wine production, dealing in vintage cars, sports drink manufacture, IT services, and regulatory compliance solutions for Banks. Funding has come variously from the entrepreneurs own funds, from family members, and from commercial investors. Investment levels have often been only £200,000 but in some cases seven figure investments have been made. Some clients have founded other businesses, but many are being entrepreneurial for the first time, starting a business not because they are disposed to be serial entrepreneurs, but because they have reached that stage in their careers where they want to see if they can 'run the show' successfully.

In the table overleaf I address some of the questions before the MAC. The feedback, especially regarding the possibility of focus on / promoting particular sectors, is informed by the implementation of the 'Genuine Entrepreneur Test', which involved visa staff having to assess 'credibility and viability' of an applicant's intentions. Analysing a business plan is not a trivial administrative task, it involves making qualitative judgements which are necessarily subjective, and can never be taken as accurate. If solid professional analysis was a good predictor of the future, Venture Capital companies would have a great 'hit rate': but the Wall Street Journal reports "About three-quarters of venture-backed firms in the U.S. don't return investors' capital, according to recent research by Shikhar Ghosh, a senior lecturer at Harvard Business School¹". The highly paid and highly qualified analysts at Venture Capital

¹ <http://www.wsj.com/articles/SB10000872396390443720204578004980476429190>

firms are generally considering detailed business plans prepared by MBAs or similar professionals. When the 'genuine entrepreneur test' was introduced, there was no warning, and no evidence that visa staff had been trained to understand and assess business plans. Lacking such training, they did their best to implement the new rules, but glaring errors were inevitable.

In Q1 2014 a Russian businessman asked me if the refusal of his application was due to the international situation (de-facto sanctions against Russians). He had £200,000 of his own cash, demonstrably coming from the after-tax earnings of the fruit juice business he ran. He planned to enter a Joint Venture with a UK sporting goods company: in return for very much a minority stake, he would invest £200,000, and provide his juice/drinks expertise as a working director, in a new subsidiary that would enter the growing sports drink market. He was told that this plans lacked credibility; When pressed, an official told him that he 'might have succeeded if he had included about a 40 page business plan with detailed market research'. Had the visa interview been used to cross examine the applicant about his business plans, it would have been apparent that he was an expert in his area, but this was not done, nor was there any attempt by visa officers to contact his Joint Venture partner in the UK.

A key purpose of the last Labour government's points based system was to remove discretion and subjective assessments from the visa application process. This would allow 'efficient' processing, utilising outsourced process management (eg VFS Global), and lower-skilled (and cheaper) staff. The new government has different priorities, and wants subjective assessments rather than just a 'tick box' analysis. That change requires not only the publishing of new rules, but the creation of the apparatus required for their application. If the staff hired and trained to operate the old points based system now need to exercise subjective judgment about businesses, they need a lot of training. Of course, once given such training they would have a new valuable and transferrable skill that is highly marketable, and would usually necessitate higher pay.

	Question before the MAC	Analysis
	<p><i>Is (a) the initial eligibility criterion of access to funds is a sufficient determinant of entrepreneurial ability and whether other criteria, for example, assessment of previous entrepreneurial activity and/or testing the purpose of the investment, should be applied</i></p> <p>Eligibility and extension criteria</p> <p>5.3 At present, the Home Office takes the amount of money available as a proxy for the entrepreneurial skills of the migrant. Their immigration officials can ask to see more evidence such as a business plan but the MAC is aware of some agencies that offer to provide business plans to prospective</p>	<p>The availability of cash to invest is not necessarily correlated with entrepreneurial ability. Inheritance or the backing of a rich friend or relative can provide an applicant with cash. However, most people with £200,000 to invest in a business are serious and committed, and this may be as good a proxy as any.</p> <p>If we added a requirement that a Tier 1 (entrepreneur) visa applicant should have already established a business, then we would be turning the route into one only open to second-time and serial entrepreneurs. It would be a pity if the route were not open to an expat with a business idea, lots of energy, £200,000 of funding, and eg the profile of Richard</p>

<p>entrepreneur route applicants.</p> <p>The MAC will consider whether the existing criteria are set at an appropriate level or whether other criteria should be considered; for example, a prospective migrant's track record in establishing businesses.</p>	<p>Branson when he started his first business.</p> <p>Further there are practical complications in considering 'prior entrepreneurship' – must a business be owner-managed to 'count' or would points be awarded to an 'intrapreneur' who established a new area for an existing company? If you want only owner-managers, then what restrictions, if any, are placed in terms of business partners; does the prospective entrepreneur need to show that they owned >51% of 'their' former business? Is 25% acceptable? Is 5%? Is 1%?</p> <p>Does entrepreneurship while at school count? Warren Buffet started by having a paper round, would paper distribution while at primary school count? If 'Yes', how is it proved, if 'No' what then is the threshold?</p> <p>Assessing a track record in 'entrepreneurship' would certainly not be a 'tick box' assessment. It is necessarily qualitative unless one has a prescriptive straightjacket that would rule out a lot of bona fide entrepreneurs</p>
<p><i>Are (b) the existing eligibility and extension criteria are aligned sufficiently with entrepreneurial and early stage business life-cycles, including consideration of the role angel investors and crowd-funding can play</i></p>	<p>Initial business plans often project good growth by the end of Year 3, but reality usually involves success coming ;later (if at all).</p> <p>Although not necessarily greatly aligned with business life cycles, The initial 3 years is a reasonable compromise.</p> <p>There was better alignment with the unpredictability of 'real life' when the requirement that the business should create two positions for 12+ months was interpreted flexibly as the equivalent of '2 FTE for a year' to allow eg 4 staff for 6 months, or 1 employee for 24 months.</p> <p>Can it be right to say that that even if they now employ 6 or 10 people, an entrepreneur automatically fails the extension criteria if they did not have 2 staff on the payroll within 2 years (or 2 years 4 months) of starting the business</p>

<p>Does (c) the route utilises international best practice. As part of this, the MAC is requested to consider route design and incentives to ensure competitiveness.”</p>	<p>The main ‘international lesson’ we can learn is not about scheme design, but the importance of polite professionalism & efficiency in the staff ‘at the coalface’. Many people have chosen to minimise their travel to the USA, and others have chosen not to relocate there, because they have had bad experiences dealing with airport staff whose post ‘9/11’ approach has been to treat all travellers as suspected terrorists. By being polite, fair, and efficient, and by having a welcoming demeanor to, even when applying restrictive rules, the UK can improve its attractiveness to the world’s brightest and best</p>
<p>Economic Impact of Migrant Entrepreneurs 5.2 First and foremost among these is the need to clearly identify the purpose of the routes. The MAC will consider the evidence of the direct, and indirect, economic impact of migrant entrepreneurs. For example, the size of business, the sectors that entrepreneurs focus on and the potential dynamic impacts. The MAC will also consider the potential costs of a migrant entrepreneur. For example, the potential for an entrepreneur to displace an existing business. In a nutshell, what is the impact of migrant entrepreneurs on UK residents? And can this impact be enhanced?</p>	<p>I ask the MAC to question its brief in this area regarding “ <i>the potential costs of a migrant entrepreneur. For example, the potential for an entrepreneur to displace an existing business</i>”.</p> <p>If Mark Zuckerberg had wanted to move to London to start Facebook, should UK visa policy have kept him out in order to prevent it competing with the existing UK business ‘Friends Reunited’ ? If ‘Uber’ were to have wanted to launch first in the UK, should UK visa policy have been concerned to prevent it competing with UK businesspeople running Black Cabs? When it comes to innovative technical services/applications, once they are developed they can often enter new jurisdictions without a physical presence. The question is ‘Which country gets to host the HQ and the development functions’? The UK is best served by attracting such businesses. Also, if a new business et up by an immigrant is able to take market share from existing UK businesses, then it is likely to be doing so by offering its customers a more attractive proposition. Although the ‘defeated’ business might be vocal, numerically the majority of those in the UK affected will be customers who find a greater benefit from using the new product/service.</p>

Evidence of abuse

5.4 The MAC will consider whether the route is currently open to abuse by those seeking to evade or to exploit immigration control, and what can be done to prevent such abuse. For example, could the initial £200,000 outlay be recycled among different applicants and what is the potential for in-country switching from other routes such as the post-study work route?

As the UK uses fiat money and operates a fractional reserve banking system, such 'recycling' is inevitable: If an immigrant entrepreneur deposits £200,000 with HSBC, then the asset on its balance sheet will allow HSBC to make new loans. There is no practical way to identify particular new deposits by an immigrant entrepreneurs and prevent HSBC's subsequent loans including financing to other immigrant entrepreneurs.

Instances of un-stoppable 'recycling' are not confined to cases intermediated by a company with a banking license. Consider the case of a (T1e visa holding) vintage car dealer. He uses his £200,000 to buy stock in the form of several cars. This money is then controlled by the person or people that previously owned the cars. One can not prevent those former-car-owners from using the cash they have received to back an immigrant entrepreneur.

I suggest that 'recycling' is not a problem. Rather the problem is limited to cases where the £200,000 investment will not be made at all: cases where, in effect, there are documents purporting to show funds that will be invested in the company, but which will not be so invested.

Economic costs and benefits

1. What are the economic costs and benefits, to UK residents, of the entrepreneur routes? What economic benefit should the admission of overseas entrepreneurs deliver to the UK?

The benefits of admitting overseas entrepreneurs to the UK include:

- Adding to the UK population / workforce / tax base individuals of significantly above (the UK) average initiative, drive, and productive ability
- Benefits to consumers arising from having the opportunity to buy EITHER a new product/service that is compelling OR a better/cheaper alternative to existing products/services
- Benefits to the UK business infrastructure by promoting the 'cluster effect'; the creation of a 'critical mass' of demand from entrepreneurs that thereby creates an addressable market for those providing services (accountancy, banking, marketing, serviced offices, venture capital, etc).
- Benefits to UK workers that may be offered a job that is better than their existing job (or where they are previously unemployed)
- Benefits to the international competitiveness of UK businesses: while competition may not be immediately welcomed, it is by having a competitive environment that companies are forced to improve their offerings: if a company's 'home' market is quite rigid, participants will be tempted to stay in a 'comfort zone'. If the home market in the UK is highly competitive & dynamic, then those UK businesses that can flourish here are more likely to be good enough to expand into other countries.

<p>2. Does the current package of visa routes for overseas entrepreneurs meet the requirements of the UK economy?</p>	<p>The Tier 1 (Investor) route is used by some asset-rich Entrepreneurs as the route is simpler than Tier 1 (Entrepreneur). However, the investor may then be forced to put some of their capital into quoted securities when there would be greater benefit to the individual, and the UK, if the funds could be deployed in their own businesses.</p>
<p>3. Should the design of the entrepreneur visa schemes offer differentiated criteria for different types of businesses? For example, start-ups, high-growth potential companies, or established businesses.</p>	<p>Whether or not such differentiation is theoretically optimal, and I believe it is not, I doubt it would be practical to codify the differences and undertake the various qualitative assessments that applications would then involve.</p>
<p>4. Would there be any benefits to the UK economy of incentivising increased entrepreneurial activity in particular sectors? The MAC welcomes supporting evidence in relation to the following factors:</p> <ul style="list-style-type: none"> <input type="checkbox"/> In which sectors of the UK economy do you think increased entrepreneurial activity would provide most benefit, and why? <input type="checkbox"/> What barriers may hamper foreign entrepreneurs coming to these sectors? <input type="checkbox"/> What incentives would encourage foreign entrepreneurs in such sectors, and why? <input type="checkbox"/> At a practical level, how might a scheme to incentivise entrepreneurial activity in certain sectors operate? 	<p>It is a mistake for government to think that it can or should 'direct' entrepreneurship. Attempts at such direction inevitably lead to distortions, and lower overall productivity, as businesses and their advisors spend time 'proving that they fit the right sector' rather than making their offering as compelling as possible. The best that government can do is to create an open environment in which those minded to be entrepreneurs are able to create businesses, to build them, and (if necessary) to close them.</p> <p>Only a small minority of entrepreneurs start by thinking 'I want to start a business. What should it be?' Most know a sector, and set up a business to target an opportunity in the sector where they have expertise.</p> <p>The UK already has some great advantages in the rule of law, the English language, taxes at levels that are generally internationally competitive, and a relatively liberal labour market. If we make it clear that we are 'open for business' to expats wanting to set up businesses, they will do so, and we will benefit.</p>

<p>5. Should the route be targeted at particular types of businesses? For example, particular sectors, or businesses with high-growth potential.</p>	<p>No. Please see above. Almost every entrepreneur wants growth, indeed most work very long hours, in part due to overly optimistic beliefs about what they will achieve. They will find and pursue growth opportunities without being steered there.</p> <p>The only exception one might want to make to the above is the already-existing exclusion of residential property investment</p>
<p>6. Does having minimum funding requirements of £50k/£200k assist in identifying entrepreneur migrants who are likely to be successful in starting a business here? What would be the impact of a) lowering or b) raising the thresholds?</p>	<p>Yes. It helps identify those who will be successful starting a business (as doing so generally requires an amount of seed capital, without which starting is impractical). BUT it does not identify those whose businesses, once started, will flourish.</p> <p>Where funding comes from a third party investor, then the due diligence by that third party may have 'weeded out' the weaker business ideas, but as the cliché goes '<i>Prediction is very difficult, especially if it's about the future</i>'. Venture capital firms employ bright people, they pay them well, and incentivise them very well, yet most investee companies fail. 25% return their the VC investors capital, but even out of that 25%, only a minority achieve anything like their business plans.</p>
<p>7. What other criteria could be applied to identify entrepreneurial talent? Should provision be made specifically for accelerators, or other sources of recognised third-party endorsement for potential businesses?</p>	<p>The Home Office should not start trying to assess Entrepreneurial talent. Nor should it worry about the chances of an entrepreneur's business being successful. The entrepreneur risking their own (and/or their investors') money is already suitably incentivised to make a success of their plans. The Home Office should consider only 'does the applicant have funds?'</p>
<p>8. What provisions should be made for the source of funding, such as crowd funding, seed funding, venture capital, angel investments etc? In what ways might financial due diligence be exploited more in the entry criteria?</p>	<p>If the Home Office develops a team with expertise in assessing business plans, then the limited time of the senior and expensive members of that team could be focused on interviewing those applicants whose business plans had not had the benefit of third party due diligence.</p>

<p>10. Are the criteria for settlement and extension sufficient to ensure that indefinite leave to remain in the UK is only awarded to entrepreneurs who have made a substantial net positive contribution to the UK economy?</p>	<p>Creating a business in the UK, working hard, putting capital at risk, and creating jobs, are all contributions to the UK. On balance the contribution made by entrepreneurs (local & migrant) exceeds the costs, but looking for an individual assessment of “a substantial net positive contribution to the UK economy” is neither reasonable nor practical. A migrant may have a successful business paying hundreds of thousands a year in taxes; if that migrant (or a dependent) contracts a rare disease that is expensive for the NHS to treat, should the cost of that treatment be a ‘minus’ offset against the ‘plusses’ of tax paid, jobs created, etc?. Doing so would certainly make the UK a less attractive destination for highly productive globally mobile professionals. The best that policy in this area can do is to ask ‘Will attracting this type of person to the UK improve the country?’ Looking at those that now qualify, I believe that the answer is ‘Yes’</p>
<p>12. What are the prime motivations for establishing a business in the UK in preference to other countries? How are these motivations affected by:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Economic and business factors, such as, taxation policies, regulation, the ease of doing business or economic growth prospects; and <input type="checkbox"/> Non-economic and non-business factors, such as the education system, language spoken, and social and cultural factors? 	<p>The latter ‘soft’ factors (language, culture) are often what puts the UK ‘on the list’; they are necessary but not sufficient conditions. The main prerequisite is the identification of an opportunity that can be pursued in the UK</p>
<p>13. Are the current criteria sufficient to ensure that the route is not used abusively, that is by individuals who do not intend to take a central role in the running of a business with genuine ambitions to grow?</p> <p>14. What other criteria could be used to prevent abuse?</p>	
<ul style="list-style-type: none"> <input type="checkbox"/> At what point can we reasonably expect that a migrant granted leave as an Entrepreneur to have 	<p>Most businesses fail, so we should not expect the establishment of a successful business at all. The only reasonable requirement is that the business should be genuine and have the potential to be</p>

	established a successful business?	successful
	<input type="checkbox"/> How could we ensure effective monitoring of the progress of migrant entrepreneur's businesses?	
	<input type="checkbox"/> How should the entrepreneur visa regime deal with failure of the migrant's business?	<p>We should emulate Silicon Valley in recognizing that failure in one business can be a stepping stone to later success. If a person has invested and lost the £200,000, then it will usually be in the UK's interest to keep them here, provided that they can support themselves.</p>
	<input type="checkbox"/> What would be reasonable criteria for granting extensions to the initial period of leave granted to entrepreneurs?	<p>The present criteria are broadly reasonable, but could be improved in several ways</p> <ul style="list-style-type: none"> - Allowing those that have had to wait for success, but now employ >2 staff to qualify for extension (rather than automatically 'failing' an entrepreneur that has created jobs only in the final year of their initial leave) - Allowing part time jobs to be included: rather than '2 full time posts', allowing the equivalent of 2 full time posts' would end the anomaly under which an entrepreneur is discouraged from eg employing two returning-to-work-parents each with 'family friendly' hours - Allowing profitability as an alternative to job creation. If someone designs an amazing application that is highly profitable and that have paid hundreds of thousands of pounds of tax on the profits, the UK will benefit by them staying, even if they have not employed 2 full time staff

I hope that this feedback if helpful, and would be pleased to discuss it.

Yours faithfully

James Wallace-Dunlop
 07879 480 755
James.Dunlop@jdunlop.com