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Choosing the right visa when migrating makes all the difference

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Migration to developed countries is a hot political topic these days. The US and European economies have suffered badly in the recession, which has led to a tightening of controls. In a speech to the University of East Anglia last year, British Prime Minister David Cameron said net migration into Britain needed to come down from hundreds of thousands a year to just tens of thousands.

Against this backdrop, Hong Kong students who want to stay on to work in the country where they have attended university face an uphill struggle. It is therefore vital to find out the category of visa or work permit that gives the best chance of being allowed to take up employment.

In the US the best chance might be to apply for Optional Practical Training. This is valid for one year and allows the holder to work in the US in a field related to their degree. If the degree is in a technical subject and the prospective US employer has registered with the US Social Security Administration, then this visa can be valid for up to 27 months.

Usually the only work visa available in the US to foreign graduate students is the H-1B. There is an annual quota of 65,000 such visas but the quota is considerably oversubscribed. There are special arrangements for holders of Singaporean and Australian passports that can prove beneficial. There is also an O-1 visa for people with outstanding abilities in arts, science, education or sports, but it may be tough for a young graduate to establish their credentials to qualify for this.

Lastly, there is the EB-5 visa, which requires the graduate to set up a business in the US and invest not less than US$500,000. A successful EB-5 applicant gets a Green Card into the bargain.

The British approach tends to be even more restrictive. The best bet may be the Tier 1 (Graduate Entrepreneur) visa. However, there is an annual limit of 2,000 places and the applicant must hold a British degree and receive an endorsement from a recognised higher education institute. One hundred of the 2,000 annual places are reserved for graduates sponsored by the government's UK Trade and Investment department. The visa is valid for one year and can be extended for a second year.

It is possible for a foreign student without higher education institution endorsement to set up their own business under the Tier 1 (Entrepreneur) category, but the applicant will require funds of £200,000 (HK$2.6 million) or only £50,000 if funding is obtained from registered venture capital funds or certain British government departments. The visa is initially valid for three years and can be extended so as to lead to permanent residence.

A foreign graduate student may prefer to take employment rather than become an entrepreneur. In that event a Tier 2 (General) visa may be appropriate. The applicant must hold a British degree and the employer needs to hold a sponsor's licence issued by the Home Office. There is also a scheme to permit individuals who come to Britain for up to two years for work experience or training. A variance of this scheme is the Tier 5 (Youth Mobility Scheme) visa which is open to young persons aged 18 to 30 to enable them to come to Britain for a two-year period. Although there is an annual quota of 1,000 for applicants under the scheme from Hong Kong, there is no quota for applicants who hold a British National (Overseas) passport.

If a foreign student is lucky enough to be a high-net-worth individual, then there is always the Tier 1 (Investor) visa. This requires an investment of £1 million and can lead to permanent residence after five years. For exceptional foreign students there is the Tier 1 (Exceptional Talent) visa, which requires applicants to demonstrate exceptional talent in his or her chosen field.

In applying for these schemes, it is important that graduates keep the bigger picture in view. Europe and the US are high-tax jurisdictions. Under US law, acquiring a Green Card eventually leads to liability for US tax on worldwide income and assets.

Likewise in Britain, residence brings with it exposure to income tax and capital gains tax. Longer-term residence involves potential liability to inheritance tax at a standard of 40 per cent, which could lead to complications later if recipients of assets are based in Europe or the US.

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