



# Open for Business; Open for People!?

A Way Forward for UK-US Labour Mobility



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# 1 Introduction

Throughout history, attracting temporary or permanent international workers has been a huge part of the economic success of the United Kingdom (UK) and the United States (US). Within the public and private sectors, the ability to draw on a pool of workers, regardless of their nationality, has been essential for economic growth and competitive advantage within a globalised economy.

Migrants have shaped and contributed to the UK and US economies and societies, making them two of the largest economies in the world, and highly attractive destinations for investment.

Both the UK and the US are currently in need of immigration reform. In the UK, because its departure from the European Union (EU), which includes ending free movement for European Economic Area (EEA) citizens, requires for the Government to put a new immigration system in place. In the US, because immigration reform has been a sticking point in Washington for decades, leading to the current system not being fit for purpose.

The UK and the US have a very strong and productive bilateral relationship when it comes to the mobility of labour between their economies. Yet, there is growing concern among transatlantic businesses that, because of current domestic debates in both the UK and the US, immigration procedures for entrepreneurs and companies trying to build or resource their businesses across the Atlantic are not working as well as they could.

This paper sets out the current status and direction of UK and US immigration reform attempts. It provides a summary of the signals that businesses are receiving from government. It also highlights the challenges, and most importantly, the opportunities in the UK-US corridor that can help make a positive case and offer a way forward for a more open approach to the mobility of workers.

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This White Paper has been produced by BritishAmerican Business (BAB), in consultation with various stakeholders, as part of its ongoing transatlantic policy work. A draft version of the Paper was presented to a select group of representatives from business, government, trade associations and academia on 6th February 2020 in Washington, D.C..

We would like to thank all those who took part in the process, including the U.S. Chamber of Commerce, the British-American Business Association (BABA), and the National Foreign Trade Council, with particular thanks to all those who offered specific evidence to the research.

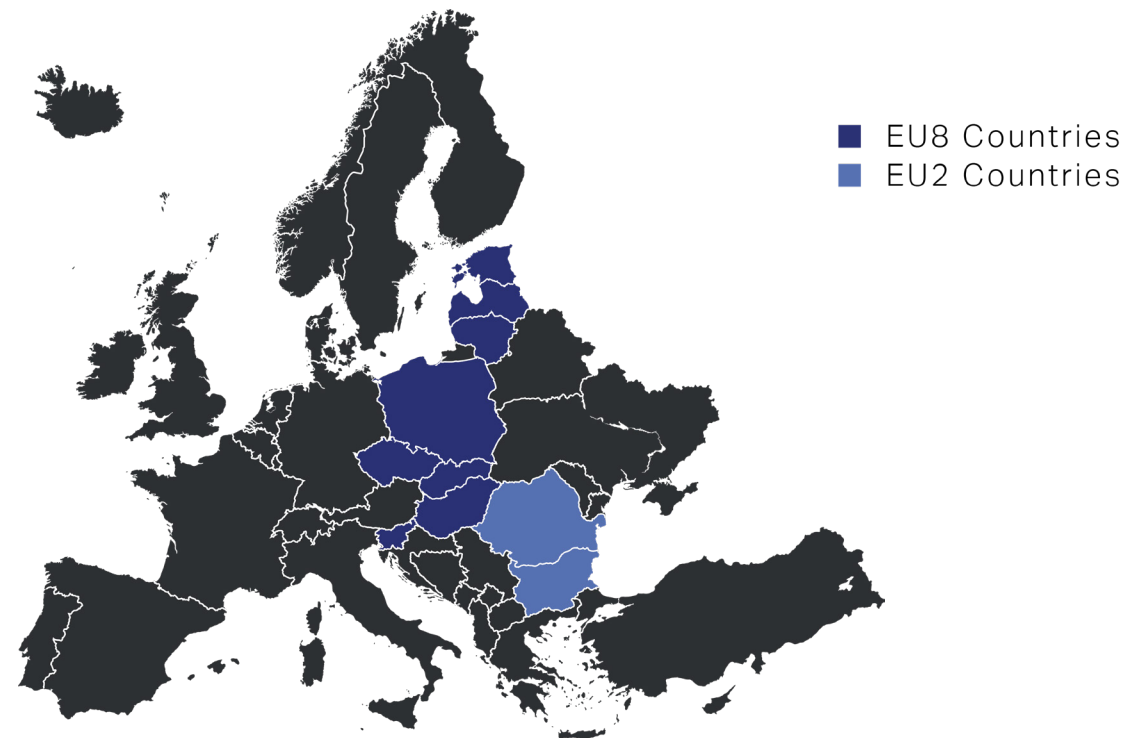
## 2 Open for Business; Closing for People?

### The United Kingdom

The UK has seen several waves of immigration and emigration throughout its long history. Over the past century, trends such as living standards, developments in infrastructure and as a result, work opportunities, as well as population displacement because of war have all been factors affecting migration to and from the UK which is the world's 4th most desirable destination for migrants.<sup>1</sup>

Most recently, due to freedom of movement for people within the European Union, other EU countries have been the main source of migration to the UK. While in 1995 there were 0.9 million EU-born migrants living in the UK,<sup>2</sup> by 2018 this number rose to an estimated 3.6 million – roughly 5.5% of the total UK population (compared to non-EU born people which made up 8.8% of the total population).<sup>3</sup>

Among these more recent arrivals, roughly 53% were immigrants from the EU8 – 8 of the countries that joined the EU in 2004, i.e. The Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia, and Slovenia – and the EU2 – the countries that joined in 2008, i.e. Bulgaria and Romania.



While the labour market absorbed the new availability of workers extremely well to this date – with the overall unemployment rate currently at a decades-low of 3.8%<sup>4</sup> – the steep increase in (EU) immigration fuelled concerns in the general public over the presumed negative impact of immigration, especially on public services like schools, hospitals, and the police.

Since 2010, the Conservative Government pledged to limit net migration to the UK to the 'tens of thousands.'<sup>5</sup> With the refugee crisis in 2015 adding a further dimension of concern and argument, immigration subsequently became a major part of the public debate around the UK's future within the EU. Research shows that concern over uncontrolled immigration was one of the issues leading to the UK's decision to vote to leave the EU in 2016<sup>6</sup>

Since the 2016 decision to leave the EU and the Government's commitment to end free movement for

EU citizens, the ongoing immigration debate in the UK has raised concerns among businesses about the supply of workers. In fact, since 2015, when EU net migration to the UK reached its peak of 200,000, the UK has seen a steady decline of EU migration, reaching its lowest level in 2019 since 2003.<sup>7</sup>

Interestingly, while this development appears to be in line with one of the key promises made before the referendum, another trend has become visible: since 2013, non-EU migration has steadily increased, keeping net immigration at 212,000 in 2019. What makes the new migration pattern different is an increase in people coming to the UK for education and a decrease in immigration for work.<sup>8</sup>

The ongoing debate in the UK shows the difficulty of balancing continued net immigration, and calls for it to be capped, with the reality that a growing economy and an ageing workforce requires new workers unless there is a dramatic increase in productivity. The recent decision to allow foreign students to stay for up to two years in the UK after finishing their studies in order to find employment was seen as a positive step forward.<sup>9</sup> However, more needs to be done to address concerns that the UK may add more barriers to the mobility of labour than necessary in the short- and long-term.

In that context, the biggest challenge and necessity remains how the UK can design an immigration system post-Brexit that embraces the situation described above to the advantage of the UK economy.

A first comprehensive plan to overhaul the immigration system was outlined in a December 2018 government White Paper.<sup>10</sup> The proposal would end the advantage the UK gives to EU migrants and attempt to satisfy calls for immigration control which have underpinned Brexit, while acknowledging that businesses already struggle with recruitment at a time when employment is at record high levels. The proposal was generally welcomed by the transatlantic business community including by BAB; we particularly welcomed the proposed lifting of the cap on numbers of skilled workers. But we also acknowledged the concerns of seasonal employers and industries like healthcare and hospitality.<sup>11</sup>

In 2019, The Migration Advisory Committee (MAC) was commissioned to publish a report to inform the Government's reform plans. Two key takeaways from the MAC's recommendations are that the Tier 1 visa route for skilled workers should be replaced by a points-based system, and that the Tier 2 (general) salary threshold should be lowered from the current level of £30,000 to £25,600.

In February 2020, The UK Government issued a policy statement in which it laid out its plans.<sup>12</sup> In summary, there will be a new points-based approach to Tier 2 (skilled) visas, with 70 points needed to be eligible for a visa. All applications through this route will be employer-led. The Government has accepted the MAC's recommendation on salary thresholds; however, applicants may still be able to obtain a visa if they can demonstrate that they have a job offer in a specific shortage occupation, as designated by the MAC, or if they have a PhD relevant to the job.

Furthermore, the policy statement confirmed that the cap and resident labour market testing (RLMT) for skilled workers (tier 2) will be lifted.

If the Government delivers on its promise to make the system quick, efficient, and less bureaucratic, then a new, unified system for both EEA and non-EEA countries may offer opportunities for US workers looking to obtain both skilled and general visas to move to the UK.

### The United States

The US immigration debate, spanning several decades now, has proved to be a sticking point in Washington policymaking.

There have been plenty of attempts to reform the country's immigration system but, because the debate brings together economic interests, security concerns, public concerns, and humanitarian dimensions,



reaching some form of compromise has proven extremely difficult.

There were 44.5 million immigrants in the US in 2017, with 1 in 7 residents foreign born. Immigrants' current share— 13.7%—of the overall US population (325.7 million people) has been increasing since the record low marked in 1970, but it remains below the historical record of 14.8% hit in 1890<sup>13</sup>

Estimates suggest the total annual contribution of foreign-born workers to be roughly \$2 trillion, or about 10% of annual GDP,<sup>14</sup> with the contribution of unauthorized immigrants at around 2.6% of GDP.<sup>15</sup> Furthermore, evidence shows that migrants do not strain public services. Immigrants use 39% fewer welfare and entitlements benefits per person than native-born Americans. They are less likely to use the individual programs in most cases and, when they do, the benefits they receive tend to be smaller.<sup>16</sup>

However, the issue of access to labour force has become difficult to disentangle from the much more politically sensitive matter of migration through the southern border, with apparent consequences for transatlantic labour mobility.

Providing security at the southern border and finding ways to provide a path to legal status for unauthorized immigrants are both seen as important immigration policy goals by a majority of Americans, according to Pew Research Center. 67% of Americans say it is very, or somewhat important to establish a way for most immigrants in the country illegally to remain legally. Additionally, 68% say it is very, or somewhat important to increase security along the US-Mexico border.<sup>17</sup>

While these objectives have informed the policy priorities of the current US Administration, policymakers have not been able to find a solution to immigration policy which would encapsulate both.

Most recently, a plan was published by the White House in May 2019, linking stronger border enforcement with a reformed merit-based immigration system. The plan did not include issues such as H-1B or EB-5 visa reform, a pathway to citizenship for unauthorized immigrants, or a reform of the immigration processing system. Progress on the plan stalled in Congress.

Worryingly, the US Administration's rhetoric and action, reflected in a number of public statements and news reports, suggests that the US's legitimate attempts to curb unauthorized immigration may have possible negative side effects on the international availability of labour which the country wants and needs.

The U.S. - Mexico border is the most frequently crossed border in the world, processing approximately 990 million documented migrants annually.

### 3 UK-US Mobility of Labour as Collateral Damage of Domestic Debates?

The UK and the US share one of the largest and most successful economic relationships in the world. Thousands of British and American firms invest across the Atlantic, with some investments going back over 100 years. The two countries are each other's largest investors, with UK companies investing \$541 bn in the US and US companies investing \$747 bn in the UK as of 2017.<sup>18</sup>

These deep economic ties are in part built on the ability of entrepreneurs and company employees to move between the two countries to work, whether short- or long-term. The UK and the US share a special relationship not only economically, but also culturally and politically. Many Americans have made the UK their home, and British citizens live and work throughout all US states. On average, over 25,000 US citizens enter the UK for work annually,<sup>19</sup> and over 173,000 British citizens entered the US as temporary workers in 2017.<sup>20</sup>

These numbers show that the UK and the US already have a very strong and productive bilateral relationship when it comes to the mobility of labour. The current political landscape represents an opportunity to reinforce it and address several emerging issues.

In the UK, there is concern among businesses that reform may not fully lift the limitations on non-EU workers pre-and post-Brexit, such as caps on numbers, salary thresholds and surcharges, to compensate for the end of EU freedom of movement. The new unified immigration system for EU and non-EU citizens needs to account for business needs and may even offer opportunities for US-UK labour mobility.

In the US, UK-US migration challenges are not directly connected to the debate around the US southern border or the UK's ambition to limit immigration from the EU. But there is growing concern among the transatlantic business community that the ability for companies of every size to move people across the transatlantic corridor may become a victim of these domestic debates.

While important to note the limited access to official 2019 data currently, BAB's assessment is informed by recruiters, immigration attorneys, and other professionals who have extensive practical experience with visa applications. Their insights show a sharp change over the past 2 years in how UK applications are being processed and approved in the H-1B, E-2, L-1 categories in particular.

There is increasing evidence that US business visas get denied more often than in previous years. There has been a sharp rise in refusals for E-2 visas issued to investors, managers, and key staff establishing new enterprises in the US. For investor visas, the percentage of denials rose from 16.4% in 2014 to 23.6% in 2017. The refusal rate for managers increased from 4.4% to 8.6% over the same period, and for key staff, the proportion of applications being turned down tripled from 2% to 6.1%. In the case of applications from the UK, covering all categories, the refusal rate increased more than five-fold from 2014 to 10.8% in 2017.<sup>21</sup> Furthermore, according to the USCIS, in the first three quarters of 2019, overall approval rates for L-1 and H-1B visas fell to 72.1% and 74% respectively, from 85% in 2016 and 95.7% in 2014.<sup>22</sup>

In addition, data from US Customs and Border Protection shows a 108% increase in refusals of inadmissible persons at US ports of entry in 2018 compared with 2015.<sup>23</sup>

Finally, the announcement that the US Citizenship and Immigration Services Office (USCIS) in London may close<sup>24</sup> has been noted with surprise and concern. Rightly or wrongly, it is seen as a tangible example of US efforts to make legal immigration more difficult (to date the USCIS office in London remains open).<sup>25</sup>

Having previously expressed our concerns about the 2017 Buy American Hire American Executive order, we are now concerned it may be impacting transatlantic labour mobility. The current transatlantic context, however, presents a window of opportunity for improvement.



## 4 A Way Forward for UK-US Mobility

The UK and the US Governments should use their relationship and the trust that both countries enjoy in each other to make a positive case for immigration, showing that the UK and the US are not only open for business, but also welcome the cross fertilization of workers that is so beneficial for both economies, not least because of the economic and demographic pressures that advanced economies more broadly face.<sup>26</sup>

As the UK and the US seek to further integrate their markets, there is a unique opportunity to use this momentum to explore further mechanisms and processes that help make it easier to work across both markets.

- A first step should be including mobility of labour as a key element in the forthcoming talks and consultations of the UK-US Trade and Investment Working Group. As immigration traditionally does not fall within the scope of a Free Trade Agreement (FTA), a decision should be made where to place the discussion within the future dialogues.
- As part of these discussions, both governments should explore whether existing models, such as the E-3 visa system available for Australian citizens, which resulted from US-Australia trade negotiations, and the USMCA TN visa for non-immigrant professionals, could serve as a template or starting point for a UK-US labour mobility model.
- A tangible approach could be to consider creating an investor and business visa for professionals that is renewable without having to repeat lengthy application processes and without being subject to restrictive quotas. A 'Trusted Business Traveller/ Investor Scheme' as such could be trialled as a 'pilot' and then be reviewed after a specific timeframe.
- Further, The UK and the US should explore how bilateral agreements and platforms, such as the UK-US sciences and technology agreements with their mobility provisions, can be expanded or serve as a template for other sectors.
- Generally, both governments could also explore whether there are ways to speed up and offer more transparency for business visa processing at Consulates and Embassies.
- Regarding the latter, it would be helpful if the US Government can establish ways to communicate any changes to visa application procedures (particularly around H-1B, E-2, L-1) as well as compliance guidelines for UK applicants.
- Additionally, consideration should be given to shortening processing times for spouse and family visas.
- With a significant number of J-1 visa issues for UK citizens every year, the UK should explore ways that expand the program while maintaining safeguards for abuse.
- As part of its immigration reform, the UK should design future requirements and mechanisms in a way that they are transparent, easy to process, and encouraging to people who want to work in the UK.
- The US should consider keeping the USCIC office in London open.
- Both countries should explore further options to facilitate the processing of arrivals based on already successful programs such as Global Entry (US) and Registered Traveller (UK).

## 5 Conclusion

The availability of workers is a crucial factor in successful, internationally competitive economies which lead on trade and investment. Advanced economies such as the US and the UK will need to use immigration policy over the next 50 years to maintain a strong workforce in the context of a rapidly ageing population.<sup>27</sup>

There is growing concern among transatlantic businesses that the ability to move workers between the UK and the US is becoming a victim of domestic immigration debates in the UK and the US.

This paper acknowledges the common challenge of having to balance electoral sentiments and often negative perceptions about immigration with the historical reality that immigration has benefited both economies. It also highlights examples that suggest that new constraints are being placed on the UK-US labour corridor.

In the context of the positive relationship between the UK and the US, the paper also argues and suggests how both countries can explore new ways to attract the best and the brightest to contribute to their economies in the future.

2020 is a milestone year for the transatlantic relationship. Given that the ability to move workers between the two countries is central to it, progress on the future trade agreement needs to go hand in hand with a commitment to remaining open for labour across the Atlantic. The upcoming trade negotiations are an opportunity to strengthen and reinforce an already strong and vibrant labour mobility partnership.





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BritishAmerican Business is the leading transatlantic trade association created as a result of the merger between the British-American Chamber of Commerce in the US and the American Chamber of Commerce in the UK.

We are committed to strengthening the economic corridor between the United States and the United Kingdom by supporting policies and actions that protect and enhance the environment for transatlantic trade and investment on behalf of our members.

We convene and serve a growing network of companies and business leaders through networking opportunities, bespoke programming and marketing platforms.

We actively promote trade and investment and support those who make the transatlantic corridor part of their business growth ambition.

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