I have a particular interest in the Immigration Rules and Tier 2 of the Point Based System. I am concerned about their ineffectiveness in preventing the undercutting and displacement of UK workers (especially workers in the Information and Communication Technology sector).

Over 40% of Tier 2 applications are for IT workers, and the vast majority of those are for Indian IT workers from IT Consulting/Outsourcing Companies under the intra company transfer category. Most are sent to work at client sites in the UK e.g. Wipro sending their staff to work at Lloyds Banking Group offices. The two main reasons these workers are sent to the UK are to facilitate offshoring or to provide cheap temporary workers to clients in the UK. I am most concerned about the second reason.

The key protection for UK workers is the appropriate salary rate (or "going rate) set by the UKBA. As Lord Hope made clear in the Alvi judgment last week (paragraph 59):
*"it can be said that the lists of minimum salaries that the Codes set out, no doubt with **the aim of protecting the UK labour market from being undermined by employing cheap labour from abroad**"*
http://www.supremecourt.gov.uk/docs/UKSC_2011_0182_Judgment.pdf

The Immigration Rules changes in CM8422 now include these salaries from the Codes of Practice. For the first time, parliament has the opportunity to scrutinize these salaries; how they are determined; and if they are effective.

It might be expected that the salaries are set at the national average for the job. However, they are generally based on much lower 25h percentile salaries i.e. 75% of UK workers doing the same job would be paid more. The IT salaries are based on the 25th percentile data from Summer 2008 from a respected salary survey company called "Salary Services Limited". The IT salaries have not been increased since the start of the Points Based System, although the UKBA did propose changes in 2011 and 2012 which were subsequently dropped after pressure from employers' groups. The Research Director at Salary Services Limited (George Molyneaux) has repeatedly complained to the UKBA that the salaries are set too low to prevent undercutting.

The single most used job title for Tier 2 applications is "Programmer" (6% of all Tier 2 applications), which is commonly used as a lower skilled, entry level job title for software professionals. The median salary for Tier 2 applications for programmers is £28,000 while the UK median salary for programmers is £32,000. This evidence suggests that undercutting is commonplace. The level of undercutting is worse as most Tier 2 programmers go to London and the South East where UK salaries are higher.

With over 3,000 programmers being brought to the UK every year under Tier 2, it is not surprising that (according to the Higher Education Statistics Authority) UK Computer Science graduates have the highest unemployment 6 months after graduating of any courses (and even media studies graduates have lower unemployment).

The government appointed, independent Migration Advisory Committee is currently running a call for evidence for updates to the Codes of Practice. One suggestion is that the appropriate rate salaries should be raised to the median (50th percentile) salary for the job. However there has been a lot of employer opposition to this increase.

I am hoping that the committee will raise the current use of the 25th percentile appropriate rates for the special attention of the House, and possibly support the idea that the average (mean or median) UK salary for a job should be used instead. The undercutting of UK workers should be reduced. Employers should be using Tier 2 to bring in the "brightest and best", and valuable and experienced workers that they need to grow. It should not be used simply to bring in cheaper labour.

There are a few other points that are worth mentioning.

It is not just UK IT workers that are adversely affected. Almost all of the largest Tier 2 sponsors are large foreign owned businesses. UK businesses are also being undermined by foreign competitors importing cheaper labour. This is especially true for small and medium IT consultancies that employ UK IT workers.

There are two other issues that make transferring non-EEA workers to the UK cheaper than employing UK workers. Firstly, the Immigration Rules permit "allowances" to count towards the appropriate salary rates for Tier 2 Intra Company Transfers (Appendix A section 75). This includes "temporary workplace" accommodation and subsistence payments connected with the secondment to the UK which are really tax free business expenses. Clarifying that Appendix A section 75 (iv) overrides (ii) and (iii) would also reduce undercutting. Secondly, the Social Security (Contributions) Regulations 2001 section 145 (b) exempts transferred workers from national insurance contributions for the first 52 weeks (including employer NIC). This can be a large saving for the employer, unless they maintain similar contributions in the home country during the secondment. The majority of transferred workers are from India where it is not necessary for the employer to continue Provident Fund contributions and, even when they do, they are tiny compared with UK NIC on UK salaries.

Lord Laird has raised many Parliamentary Questions around the NIC exemption and the use of allowances.

Please feel free to contact me with any questions.

Regards
Gary Burgess