Guest Worker Programs

Australia • Brazil • Canada • China • Germany • Israel • Japan • Mexico
Norway • Russian Federation • South Korea • Spain
United Arab Emirates • United Kingdom

European Union
EU-Turkey Association Agreement
International Labour Organization

February 2013

The Law Library of Congress, Global Legal Research Center
(202) 707-6462 (phone) • (866) 550-0442 (fax) • law@loc.gov • http://www.loc.gov/law

Contents

Comparative Analysis....1

Australia....11

Brazil....21

Canada....27

China....34

Germany....38

Israel....44

Japan....50

Mexico....54

Norway....56

Russian Federation....66

South Korea....73

Spain....77

United Arab Emirates....82

United Kingdom....84

European Union....91

EU-Turkey Association Agreement....100

International Labour Organization....102

Bibliography....107

COMPARATIVE ANALYSIS

Ruth Levush
Senior Foreign Law Specialist
and Project Coordinator

I. Introduction

This survey describes different programs available in thirteen countries[*] as well as a proposed directive of the European Union (EU), the Association Agreement between the European Union and Turkey regarding migrants of Turkish origin, and the Multilateral Framework of the International Labour Organization on the admission of guest workers. The individual reports cover laws, regulations, and directives, in addition to statistical and other relevant information on guest worker programs.

The reports provide a general overview of foreign immigration systems and address eligibility criteria for the admission of guest workers and their families, guest worker recruitment and sponsorship, and visa conditions. The reports specifically discuss the tying of temporary workers to their employers in some countries, the duration and the conditions that apply to switching employers, the terms and the renewability of guest worker visas, and the availability of a path to permanent status. The reports further address the existence of caps or quotas on guest worker visas, and the consideration of a market-based method for their establishment. In addition to individual reports a general bibliography of selected, recent English-language materials on immigration policies is included.

II. Guest Worker Policies

The sovereign right of all states to develop their own labor migration policies has been recognized under the International Labour Organization (ILO) Multilateral Framework which provides for general guidelines for the implementation of such policies in a coherent, effective, and fair way. The immigration policies adopted by the countries surveyed are therefore varied as they reflect their individual socioeconomic conditions and needs.

Almost all countries surveyed give preference to the admission of highly-skilled workers. As a country with a 1.34 billion population and abundant labor resources, China imposes restrictive controls over low-skilled workers' access to the labor market. The emerging market countries of Brazil and Mexico, similarly, do not have specific programs for low-skilled workers. Foreigners from countries that share a border with Mexico, however, may be admitted based on a Visitor Border Worker visa. Other than Brazil, China, and Mexico, all countries surveyed either currently or in the past implemented some type of guest worker program.

[*] The countries surveyed include Australia, Brazil, Canada, China, Germany, Israel, Japan, Mexico, Norway, Russia, Spain, South Korea, and the United Kingdom. These countries, along with the European Union (EU) and the International Labour Organization, were selected based on interest in their guest worker policies, the desire to cover a wide selection of both international and national approaches across continents and cultures, and the current availability of staff expertise at the Law Library of Congress.

Australia has a small number of programs for low- or semiskilled workers in different sectors or parts of the country. A seasonal worker program, introduced in July 2012 (following a four-year pilot program), involves arrangements with specific countries and special visa conditions. In addition, companies in the resources sector (e.g., mining companies) can enter into Enterprise Migration Agreements with the federal government as part of a program aimed at easing access to the country by employer-sponsored, semiskilled, temporary workers in order to address labor shortages. A further Regional Migration Agreement program is designed to assist regional labor markets that are experiencing acute skill and labor shortages, particularly in remote areas. Young people from certain countries are also able to work in Australia for limited periods as part of working holiday programs. Additionally, in accordance with special reciprocal arrangements, New Zealand citizens are permitted to live, study, and work in Australia indefinitely on special temporary visas.

Immigration is a shared competence between the European Union and its twenty-seven Member States. EU Members have the right to determine the number of admissions of third-country nationals in their territory for employment purposes, including temporary workers, and are also responsible for integration policies concerning third-country nationals who reside legally within their territory. Currently, guest worker programs are dealt with by the EU Member States. In 2010, the European Commission adopted a Proposal for a Directive on Seasonal Employment. If implemented, the proposal would establish a fast-track procedure and a single residence/work permit for seasonal workers. The proposal would introduce a multiseasonal permit to allow the same workers to enter the EU market in subsequent seasons. EU Members would be required to accord to seasonal workers certain rights regarding working conditions, including health and safety requirements, access to social security, and a statutory pension, similar to the rights accorded to their nationals.

Currently, the EU Member States surveyed (Germany, Spain, and the United Kingdom), were found to have varied guest worker programs, reflecting their socioeconomic differences. During the 1960s, Germany recruited and admitted large numbers of foreign workers, mainly from Turkey. In its treatment of its Turkish residents Germany is bound by the 1963 Association Agreement between Turkey and the European Economic Community. In accordance with this agreement, Turkish nationals and their families who have lived and worked in any EU Member State for one year may renew their residence permit if the same job is still available and may renew their residence permit after three years of work in a Member State to find any kind of work. The Agreement's expansive interpretation by the European Court of Justice has resulted in the granting of permanent status to the Turkish immigrants in EU Member States, and particularly in Germany.

German immigration policy shifted in 1973 towards limiting immigration to skilled or highly-skilled workers and restricting admission of unskilled workers for short periods, preventing them from becoming permanent residents or bringing their families. Germany most commonly used temporary worker programs which facilitated the admission of guest workers from Eastern Europe; these, however, have become largely obsolete since 2011 due to enlargements of the European Union.

Like Germany, the United Kingdom does not appear to currently have a specific guest worker program for low-skilled workers. Admission into the UK for temporary workers is provided for by Tier 5 of the points-based immigration system and is open to workers in any one of the following six categories:

- creative and sporting
- charity workers
- religious workers
- government authorized exchange programs
- international agreements
- youth mobility scheme

In contrast with Germany and the UK, Spain has seen a significant increase in the entry of low-skilled immigrants from Africa, Latin America, and Eastern Europe, arriving since the 1990s with a temporary or seasonal work visa. In order to adapt the immigration laws to the new immigration reality and labor market, Spain enacted a comprehensive immigration law in 2000. The inflow of immigrants into Spain, however, has considerably decreased since 2010 due to the economic crisis, high unemployment, and financial troubles that the country is still trying to overcome.

Having been considered as the second most frequent migrant destination country in the world following the United States, Russia reportedly employed 9.1 million guest workers in 2012, mostly from the former Soviet states, China, Southeast Asia, sub-Saharan Africa, and Eastern Europe. According to news reports about 35% of all migrants in Russia are concentrated in the city of Moscow. The significant influx of both legal and illegal immigrants into Russia has been said to have created intense pressure on the government and the Russian population in the areas of social protection, health care, residential living, and employment. In an effort to address the problem, a "Concept of the State Migration Policy for the Period Until 2025" was approved on July 13, 2012, with the aim of strengthening control over migration and migrants while simplifying procedures for legal labor migration.

Israel, Japan, and South Korea were found to incorporate into their immigration policies a preference for ethnic compatriots. South Korea grants H-2 visas for ethnic Koreans with foreign citizenship. As compared with nonethnic Koreans on nonprofessional employment E-9 visas, H-2 recipients enjoy both a path to permanent residence as well as the ability to invite family members, depending on their employment period.

Whereas South Korea's H-2 visa is essentially a working visa and is subject to various limitations including industrial field restrictions, Japan grants long term residence status without employment restrictions to descendants of Japanese emigrants to South American countries, such as Brazil and Peru. Japan also accepts low-skilled migrants of non-Japanese descent under a technical trainee status of residence and admits foreign nurses and caregivers from countries with which it has concluded Economic Partnership Agreements (EPAs).

Similar to the Japanese compatriot visas, Israel's *Oleh* visas, issued in accordance with the Law of Return for Jews and their families, are not intended as work visas but rather as immigrant visas that grant permanent residence. Immigration of persons who do not qualify under the Law of Return has been limited to exceptional circumstances, including the admission of guest workers based on market needs in specific areas.

Mexico grants a Visitor Border Worker status to workers from countries that share a border with Mexico, currently authorizing migrants from Guatemala and Belize who have a job offer to work in the Mexican states of Campeche, Chiapas, Quintana Roo, and Tabasco.

III. Labor Sector Restrictions

Most countries limit the employment of guest workers to specific labor sectors based on market needs.

Australia's Seasonal Worker Program, for example, designates horticulture, tourism, sugarcane, cotton, and aquaculture as sectors where visa recipients can be employed. The use of market-based measures is further shown in the fact that for some of these sectors, such as horticulture, workers can be employed countrywide, while for the latter four sectors employment is authorized only in limited locations. Both Australia's Enterprise Migration Agreement and Regional Migration Agreement programs require that there be a need for foreign workers to fill either skilled or semiskilled positions due to a shortage of Australian workers.

Canadian programs for the hiring of foreign low-skilled workers include the Low Skilled Worker Pilot (C & D) Program (general and agricultural stream), Live-in Caregiver Program, and Seasonal Agricultural Worker Program.

The EU has similarly identified specific sectors in need of seasonal workers. These include agriculture, horticulture, and tourism. Although not expressly reserved by Mexican law, Guatemalans who are temporarily employed in Mexico under Border Worker visas are usually employed in agriculture, construction, and services. In Norway, forestry, agriculture, the fish processing industry, plant nurseries, and the restaurant and tourism industries are typical seasonal industries.

In South Korea, H-2 visas for ethnic Koreans are limited to industrial fields such as agriculture, small- or medium-sized manufacturing, construction, or the service industry. E-9 visas in Korea are similarly limited to industries that suffer labor shortages, such as agriculture and stockbreeding, fisheries, construction, and manufacturing.

In Israel, employment permits are issued in consideration of the needs of the labor market in specific labor sectors and geographical regions and currently include nursing care, agriculture, construction, welding and industrial professions, hotel work, and ethnic cookery.

IV. General Eligibility Requirements

Australian programs generally require guest workers to meet standard health and character criteria, sign an Australian Values Statement, be invited by an approved employer, and be outside Australia throughout the visa application and approval process. Conditions including age, acquisition of health insurance, and competence in English depend on the type of the program under which the migrant enters the country.

In Canada, similar to Australia, each program has its own eligibility criteria for both employees and employers. General admission requirements, however, include a commitment to leave Canada at the termination of employment, the financial ability to take care of oneself and family while in Canada, not having a criminal record, not being a danger to the security of Canada, enjoying good health; not intending to work for an ineligible employer, and not having worked in Canada for one or more periods totaling four years after April 1, 2011.

According to a proposal for a directive on the Conditions of Entry and Residence of Third-Country Nationals for the Purposes of Seasonal Employment, adopted by the European Commission in 2010, admission of guest workers would require a valid work contract or a binding job offer; a valid travel document; proof of health insurance; and proof of having adequate accommodations and resources to ensure the worker will not become dependent on the States' social assistance system. Additionally, EU Members have the right not to admit anyone who is a threat to their public security or health.

Spain, an EU Member state, currently requires visas applicants to be sixteen years of age or older; submit a certificate of good health; not have a criminal background in Spain or any other country of residence in the last five years; and submit a labor contract that guarantees employment for the period of time the foreign worker was issued the work authorization. In Norway there are no formal qualification requirements for a seasonal work permit, but the applicant must be at least eighteen years old and have a concrete offer of employment that contains a job description as well as an indication of the number of work hours per week, the hourly wage, and the duration of the offer of employment.

Israel requires guest worker applicants to submit a medical certificate based on a medical examination undertaken within three months prior to arrival in Israel to ensure that the worker was not diagnosed as a carrier of tuberculosis, hepatitis, gonorrhea, or AIDS. A foreign worker visa will not be issued unless the employer holds a permit allowing him/her to employ the worker.

Among the eligibility requirements in South Korea for H-2 visa holders is attendance at employment training conducted by the designated institution, while the requirements for E-9 nonprofessional employment visas include security clearance and Korean language proficiency.

V. Recruitment and Sponsorship

According to the ILO Multilateral Framework on Labour Migration, governments in both origin and destination countries should consider licensing and supervising recruitment and placement

services. The Multilateral Framework further recommends ensuring that recruitment fees are not borne by migrant workers. The Multilateral Framework recognizes that policies requiring employer sponsorship as a prerequisite to the admission of migrant workers are legitimate means by which states may exercise their sovereign right to regulate migrant labor.

To participate in the Seasonal Worker Program, Australian employers must be approved by the Department of Education, Employment and Workplace Relations as "Special Program Sponsors." Approved employers enter into a Special Program Agreement that sets out the terms and conditions of the program and includes monitoring and reporting obligations. Recruitment, however, is regulated by individual memoranda of understanding that are signed between the Australian government and each participating country, which set out the government agency responsible for providing or coordinating recruitment services in that country. Employer sponsorship is not required for Working Holiday visas. For the Australian subclass 457 visa an employer with a labor agreement is considered an approved sponsor and does not need to apply separately for sponsorship approval.

The Seasonal Agricultural Worker Program in Canada is administered by the Canadian Government in accordance with bilateral agreements with Mexico and particular Caribbean countries. Recruitment of workers is conducted by foreign governments. Under the Canadian C & D pilot project, recruiting is done privately, often through recruitment agencies based in Canada or abroad.

A foreign employee in Norway must, as a general rule, have a concrete offer of employment in Norway in order to apply for a residence permit there. A set form must be used to make the offer and be signed by both the employer and the employee. The work must generally be continuous, full-time employment, but can be divided among several employment offers from the same or different employers. A prospective employer can apply for a permit on the seasonal worker's behalf if the worker authorizes the employer to do so in writing.

In Israel, employment is generally not handled through manpower companies (MCs), except in the construction trade where workers can only be employed through MCs. Employment in the nursing trade may be facilitated by special companies called "nursing companies." Recruitment fees do not apply to recruitment in Israel and are capped for recruitment abroad.

VI. Visa Conditions

A. Tying of Guest Workers to Employers

In accordance with the ILO Multilateral Framework the extent to which a worker's permitted stay is tied to the sponsoring employer is within the prerogative of sovereign states to regulate, within the parameters of the fundamental principles of workers' rights and the conditions of employment.

Various countries surveyed were found to tie guest workers' visas to the specific employer that employs them. In Australia, seasonal workers are limited to working for their sponsoring employer. In Norway permits issued to unskilled employees similarly apply to specific work for

a specific employer. Like Australia and Norway, Russia prohibits guest workers from changing their employer and place of residence. Guest workers in Russia are also subject to mandatory residence registration procedures with local police.

In a 2006 leading decision by Israel's Supreme Court, however, the Court determined that the tying of a foreign worker's residence permit to a specific employer constituted a violation of the requirement of proportionality guaranteed under Israel's Basic Law: Human Dignity and Liberty. New procedures adopted in an effort to comply with the Court's decision removed any limitation on the number of transfers a worker could make among employers in assigned areas of work and further diminished the ability of an employer to block the transfer of a worker to another employer.

Like Israel, several countries were found to allow workers to switch employers, subject to compliance with certain procedures. In China, for example, although an employment permit is valid only when used in the geographic area specified in that permit and aliens must work for the employer indicated on the employment permit, the alien may switch employers within the same geographic area upon approval of altering the employment permit. Undertaking employment outside the area specified by the permit or within the area but for a different employer and in a different occupation requires a new employment permit.

South Korea's H-2 foreign workers are not tied to their employer and can change employer upon approval of their application, which must be submitted within one month from termination of employment or the expiration of the employment agreement. E-9 foreign workers can similarly work only at the designated working place unless they receive permission from the Minister of Justice.

B. Visa Terms

Australia's Seasonal Worker Program visas may apply for fourteen weeks to six months, in addition to four extra weeks to facilitate travel arrangements. Working Holiday visas allow visa holders to do any kind of work over the course of their twelve months in Australia, but they cannot work for more than six months for any one employer. Visas issued under labor agreement programs may be valid for up to four years, depending on the terms of the relevant agreement.

Canadian C & D Pilot Program visas are valid for twenty-four months but can be extended, whereas employment under the Seasonal Agricultural Worker Program can last for up to eight months between January 1 and December 15, subject to a minimum of 240 hours of work within a period of any six weeks or less. Work permits for the Canadian Live-in Caregivers Program are for up to four years plus three months and are renewable.

The duration of Chinese Alien Residence Permits is based on employment and may vary from ninety days to five years. Israeli visas similarly range from three months to five years and may be extended as long as the first extension period does not exceed two years, followed by single annual extensions. Extension beyond five years may be authorized for nursing caregivers.

Mexican Visitor Border Workers visas are limited to periods not exceeding one year. Norwegian visas are valid for periods up to two years. New permits may be granted after various periods of absence from Norway.

Similar to Norwegian visas, Russian visas can be issued for a period of up to two years; the term of the initial work authorization's validity cannot exceed one year, which can be extended for one additional year. Workers, however, are not required to leave the country to apply for a visa extension.

Foreign worker employment periods in South Korea are generally limited to three years. In Spain, however, temporary work visas allow workers to work for up to nine months within a twelve months period and can be extended for nine months if the labor contract is extended.

C. Path to Permanent Status

A survey of the selected countries' laws regarding the availability of programs offering guest workers a path to permanent status indicated that such a path rarely exists.

In Canada, temporary foreign workers generally cannot apply for permanent residence. Workers under the Live-in Caregivers Program, however, can apply for permanent residence as long as they meet certain requirements. Similarly, foreign workers in China, Israel, Norway, the Russian Federation, United Arab Emirates, and Tier 5 workers in the United Kingdom, are rarely, if ever, granted a path to permanent status.

South Korea offers a path to permanent residence to H-2 Korean compatriots but not to nonprofessional employment E-9 status holders. Some Australian Working Holiday visa holders may also be able to extend their stay, including through applying for a permanent visa.

Foreign trainees in Japan receive lectures and technical trainings for up to one year and can engage in on-the-job training for two additional years. They must return to their countries and cannot apply for permanent residence. Descendants of Japanese under the status of long-term residence, however, can stay in Japan for five years and may apply for permanent residence for themselves and their families.

D. Caps or Quotas Based on Market-Based Calculations

The ILO Multilateral Framework states that governments should ensure that temporary work schemes respond to established labor market needs. Many countries indeed tie the admission of workers to their prevailing market conditions.

In Australia, sponsoring employers are required to comply with certain obligations to ensure that the relevant program is being used to meet genuine skills shortages. A Labour Agreement program exists as a standard option that allows employers or industry associations to enter agreements with the federal government that specify occupations for which there is an identified or emerging labor shortage that cannot be resolved via normal sponsorship.

In Canada, similarly, admission depends on proof that the employer cannot find a Canadian citizen or permanent resident to fill a position and that the employment of a foreigner will not negatively impact the Canadian labor market.

In Israel, employment permits are issued in consideration of the needs of the labor market in specific labor sectors and geographical regions. Quotas exist for the agriculture and construction sectors but not for foreign workers in the nursing care sector.

Norway conducts a labor market assessment for determining that a position cannot be filled by domestic labor or labor from the European Economic Area (comprising the twenty-seven European Union Member States and Iceland, Liechtenstein, and Norway) or the European Free Trade Association area prior to the issuance of a permit. The Norwegian Directorate of Labour and Welfare establishes the quota for seasonal workers in agriculture and forestry. The Directorate of Immigration may establish further guidelines on the quota arrangements in consultation with the Directorate of Labour and Welfare.

Quotas for the admission of workers are determined by the federal government in the Russian Federation.

VII. Admission Status of Family Members

The ILO Multilateral Framework mentions family reunification efforts, but does not promote family reunification for temporary migrant workers as an international standard. A survey of the regulation of admission of guest workers' family members by different countries reflects various approaches to this issue.

In Australia, no admission is bestowed on family members under the Seasonal Worker Program or under Working Holiday Visas; partners and dependent children and relatives may, however, be included in an application for a subclass 457 visa, including those sponsored as a result of a labor agreement.

Canada generally does not admit family members. Exceptions for workers with a "lower level of formal training" may apply in certain provinces and territories. In China, family members may enter with the same visa as the worker but may not work unless they adjust their status and obtain their own employment and residence permits. In Russia, family members are not covered by visas issued to temporary guest workers. Family members of skilled workers with a Norwegian residence permit may apply for a residence permit for the worker's period of employment; it appears that the family members of seasonal workers do not have this option.

Korea allows overseas Koreans who obtain H-2 status to invite family members depending on their employment period. In Spain, family members may be issued a temporary residence visa if the applicant can prove that her or she has sufficient economic resources. The temporary residence visa under family reunification may only be issued when the foreign worker has a permit to work in Spain for at least one year, however.

In Mexico, Visitor Border Workers may request the admission of their spouses or partners and minor children. Children who have reached the age of majority but who are incapacitated are also eligible for admission.

AUSTRALIA

Kelly Buchanan, Chief
Foreign, Comparative, and
International Law Division I

SUMMARY The range of work visas available in Australia are largely targeted at skilled workers. However, some programs enable employers in particular sectors and parts of the country to sponsor overseas workers in order to fill lower-skilled positions where there are labor shortages. In particular, a seasonal worker program allows workers from certain countries to work for a sponsor in, for example, horticultural and tourism positions for up to six months, and labor agreement programs allow mining companies and companies in remote areas to sponsor overseas workers in semiskilled positions. These programs have eligibility criteria that include health and character requirements. In addition, working holiday programs allow young people from certain countries to work in Australia for limited periods without sponsorship. The programs place various obligations on employers and, in the case of seasonal workers and people on working holidays, include conditions that restrict the ability for visa holders to bring family members to the country or extend the visa period. New Zealand citizens can live and work in any occupation in Australia indefinitely, without any sponsorship or skill requirements applying.

I. Introduction

Australia's universal visa system is governed by the Migration Act 1998 and associated regulations.[1] A range of temporary and permanent visa "subclasses" is available. The eligibility criteria for each visa subclass are set out in Schedule 2 of the Migration Regulations 1994.[2] There are also character requirements[3] that apply to all visa applicants as well as health requirements that may apply depending on an applicant's length of stay, intended activities, and country of residence.[4] Applicants for permanent, and some temporary, visas may also be

[1] Migration Act 1958 (Cth), http://www.comlaw.gov.au/Details/C2012C00855; Migration Regulations 1994 (Cth), http://www.comlaw.gov.au/Details/F2013C00062. Multiple additional subsidiary instruments apply under the Migration Act, *see Legislative Instruments – All – by Title – MI*, COMLAW, http://www.comlaw.gov.au/Browse/Results/ByTitle/LegislativeInstruments/Current/Mi/0.

[2] Migration Regulations 1994 (Cth), sch 2.

[3] Migration Act 1958 (Cth), s 501; Migration Regulations 1994 (Cth), reg 1.03 & sch 4 pt 1 (Public Interest Criterion 4001). *See Character and Penal Clearance Requirements*, DEPARTMENT OF IMMIGRATION AND CITIZENSHIP (DIAC), http://www.immi.gov.au/allforms/character-requirements/ (last visited Feb. 19, 2013); *Fact Sheet 79 – The Character Requirement*, DIAC, http://www.immi.gov.au/media/fact-sheets/79character.htm (last reviewed Jan. 2013).

[4] Migration Regulations 1994 (Cth), sch 2. *See The Health Requirement*, DIAC, http://www.immi.gov.au/allforms/health-requirements/ (last visited Feb. 19, 2013); DIAC, HEALTH REQUIREMENT FOR TEMPORARY ENTRY TO AUSTRALIA (Form 1163i, Nov. 2012), http://www.immi.gov.au/allforms/pdf/1163i.pdf (copy and paste URL into browser); *Fact Sheet 22 – The Health Requirement,* DIAC, http://www.immi.gov.au/media/fact-sheets/22health.htm (last reviewed May 2010).

required to sign an Australian Values Statement.[5] Family members (partners and dependents) of primary applicants may be included on applications for some visas. Such persons must also meet any applicable health and character requirements.[6]

The country's work visa system is primarily focused on skilled workers.[7] A range of visas are available for workers with various skills, education, and occupations, including temporary employer-sponsored visas,[8] permanent visas (both independent and sponsored),[9] and programs aimed at providing avenues for different regions in the country to fill skilled positions based on their particular needs.[10]

There are a small number of programs aimed at meeting needs for low- or semiskilled workers in different sectors or parts of the country. In July 2012, following a four-year pilot program,[11] a seasonal worker program was introduced that involves arrangements with specific countries and special visa conditions.[12] In addition, companies in the resources sector (e.g., mining companies) can enter into Enterprise Migration Agreements with the federal government as part of a program aimed at easing access to the country by employer-sponsored, semiskilled temporary workers in order to address labor shortages.[13] A further Regional Migration

[5] *See Australian Values*, DIAC, http://www.immi.gov.au/living-in-australia/values/ (last visited Feb. 21, 2013); Migration Regulations 1994 (Cth), sch 4 pt 3.

[6] *See generally GSM – Adding and Withdrawing Family Members*, DIAC, http://www.immi.gov.au/skilled/general-skilled-migration/adding-family-members.htm; *see, e.g., Temporary Work (Skilled) – Standard Business Sponsorship (Subclass 457): Family Members (Secondary Visa Applicants) Eligibility*, DIAC, http://www.immi.gov.au/skilled/skilled-workers/sbs/eligibility-family.htm (both last visited Feb. 21, 2013).

[7] *See generally Fact Sheet 24 – Overview of Skilled Migration to Australia*, DIAC, http://www.immi.gov.au/media/fact-sheets/24overview_skilled.htm (last reviewed July 2012).

[8] The main temporary visa for employer-sponsored skilled workers is subclass 457 (Temporary Work (Skilled)). *See SkillSelect: Subclass 457 Visa*, DIAC, http://www.immi.gov.au/skills/skillselect/index/visas/subclass-457/; *Temporary Work (Skilled) – Standard Business Sponsorship (Subclass 457)*, DIAC, http://www.immi.gov.au/skilled/skilled-workers/sbs/ (both last visited Feb. 21, 2013).

[9] *See Professionals and Other Skilled Migrants: Visa Options*, DIAC, http://www.immi.gov.au/skilled/general-skilled-migration/visa-options.htm; *Employer Sponsored Workers: Skilled Workers Permanent Visa Options*, DIAC, http://www.immi.gov.au/skilled/skilled-workers/visa-permanent.htm (both last visited Feb. 21, 2013).

[10] *See generally Regional Initiatives*, DIAC, http://www.immi.gov.au/skilled/regional-employment/ (last visited Feb. 21, 2013).

[11] *See* Press Release, Chris Bowen MP, Visa for Pacific Island Seasonal Worker Scheme (Sept. 23, 2008), http://www.minister.immi.gov.au/media/media-releases/2008/ce08090.htm; *Pacific Seasonal Worker Pilot Scheme*, DEPARTMENT OF EDUCATION, EMPLOYMENT AND WORKPLACE RELATIONS (DEEWR), http://deewr.gov.au/pacific-seasonal-worker-pilot-scheme (last visited Feb. 19, 2013).

[12] *See Seasonal Worker Program*, DIAC, http://www.immi.gov.au/skilled/seasonal-worker/; *Seasonal Worker Program*, DEEWR, http://deewr.gov.au/seasonal-worker-program (both last visited Feb. 21, 2013).

[13] *See Enterprise Migration Agreements*, DIAC, http://www.immi.gov.au/skilled/enterprise-migration-agreements.htm (last visited Feb. 21, 2013); *Fact Sheet 48a – Enterprise Migration Agreements*, DIAC, http://www.immi.gov.au/media/fact-sheets/48a-enterprise.htm (last reviewed June 2012). *See also* Natasha Bita, *Low-skilled Migrant Numbers to Surge*, THE AUSTRALIAN (Sept. 5, 2011), http://www.theaustralian.com.au/national-affairs/low-skilled-migrant-numbers-to-surge/story-fn59niix-1226129301383; Andrew Duffy, *Low-skilled Migrant Numbers to Rise*, AUSTRALIAN MINING (Sept. 5, 2011), http://www.miningaustralia.com.au/news/low-skilled-migrant-numbers-to-rise.

Agreement program is designed to "increase capacity in regional labor markets" that are experiencing acute skill and labor shortages, particularly in remote areas.[14]

Australia also operates working holiday programs for young people of certain countries who are able to engage in any type of work for limited periods during their visit to Australia.[15] Student visas also provide limited work rights.[16]

Apart from these programs, low- or semiskilled positions may in some cases be filled by New Zealand citizens who, under special reciprocal arrangements between the two countries, are able to live, study, and work (in any occupation) in Australia indefinitely on special "temporary" visas.[17]

II. Temporary Visa Programs for Low- and Semiskilled Workers

A. Seasonal Worker Program

The Seasonal Worker Program (SWP), currently scheduled to run until 2016, is administered by the Department of Education, Employment and Workplace Relations (DEEWR). It applies to the following industries: horticulture (all locations), tourism (accommodation; limited locations), sugarcane (limited locations), cotton (limited locations), aquaculture (limited locations).[18]

1. Eligibility

The SWP makes special temporary visas (subclass 416 (Special Program) visas) available to citizens of certain countries with which Australia has entered agreements: East Timor, Kiribati, Nauru, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu, and Vanuatu.[19] In addition to meeting the standard health and character criteria, and signing an Australian Values Statement, visa applicants must be invited to participate in the SWP by an approved employer, be outside Australia throughout the visa application and approval process, be between twenty-

[14] *Regional Migration Agreements*, DIAC, http://www.immi.gov.au/skilled/regional-migration-agreements.htm (last visited Feb. 21, 2013). *See also Fact Sheet 48c – Regional Migration Agreement*, DIAC, http://www.immi.gov.au/media/fact-sheets/48c-rma.htm (last reviewed Sept. 2012).

[15] *See Work and Holiday Visa (Subclass 462)*, DIAC, http://www.immi.gov.au/visitors/working-holiday/462/; *Working Holiday Visa (Subclass 417)*, DIAC, http://www.immi.gov.au/visitors/working-holiday/417/ (both last visited Feb. 21, 2013).

[16] *See Student Visa Conditions for the Primary Visa Holder*, DIAC, http://www.immi.gov.au/students/visa-conditions-students.htm (last visited Feb. 21, 2013).

[17] Migration Act 1958 (Cth), s 32; Migration Regulations 1994 (Cth), sch 2 subclass 444; *New Zealand Citizens Entering Australia*, DIAC, http://www.immi.gov.au/allforms/travel-documents/new-zealand.htm (last visited Feb. 11, 2013); *Fact Sheet 17 – New Zealanders in Australia*, DIAC, http://www.immi.gov.au/media/fact-sheets/17nz.htm (last reviewed Oct. 2012). For detailed information on the New Zealand-born workforce in Australia, *see* Robert Haig, *Working Across the Ditch: New Zealanders Working in Australia* (Department of Labour, May 2010), http://www.dol.govt.nz/publications/research/ditch/index.asp.

[18] *Seasonal Worker Program: How This Program Works*, DIAC, http://www.immi.gov.au/skilled/seasonal-worker/how-program-works.htm (last visited Feb. 14, 2013).

[19] Seasonal Worker Program, *supra* note 12.

one and forty-five years of age, and "have a genuine intention to comply with the conditions of the visa and enter Australia temporarily for seasonal work and return to [their] home country after employment ceases."[20]

2. Recruitment and Sponsorship

Employers must be approved by DEEWR as "Special Program Sponsors" in order to participate in the SWP. Approved employers enter into a Special Program Agreement that sets out the terms and conditions of the program and includes monitoring and reporting on obligations.[21] Sponsors have particular obligations, including cooperating with inspectors; keeping certain records and providing these on request; informing the Department of Immigration and Citizenship (DIAC) when certain events occur; not recovering, or seeking to recover, certain costs from the sponsored applicant, including in relation to their recruitment or the employer's application to become a sponsor; paying costs (up to AU$10,000) incurred by the government in locating or removing a sponsored applicant from Australia where they have become an unlawful noncitizen; and any other obligations set out in the agreement with DEEWR.[22]

In terms of recruitment, the Memorandum of Understanding between the Australian government and each participating country sets out the government agency responsible for providing or coordinating recruitment services in that country. Those services include: assisting sponsors in selecting "a suitable number of appropriate seasonal workers, taking into account employer requirements, potential development impacts and gender equity"; providing assistance to applicants, where required, to obtain health checks and police clearances; verifying applicant identities; and coordinating predeparture briefings for selected workers that cover matters such as Australian living and working conditions, the costs involved, accommodation arrangements, taxation and deductions from earnings, visa conditions, financial literacy, and banking and remittance arrangements.[23]

3. Visa Conditions

Under the SWP, seasonal workers

- are able work in Australia for fourteen weeks to 6 months
- are permitted multiple travel to Australia during this period
- may return to work in future years, if they comply with visa conditions
- are limited to working with the Special Program Sponsor
- must maintain private health insurance during their stay
- are not permitted to apply for another visa while in Australia

[20] *Seasonal Worker Program: Eligibility*, DIAC, http://www.immi.gov.au/skilled/seasonal-worker/eligibility.htm (last visited Feb. 14, 2013).

[21] *Id*.

[22] *Seasonal Worker Program: Special Program Sponsor Obligations*, DIAC, http://www.immi.gov.au/skilled/seasonal-worker/sponsor-obligations.htm (last visited Feb. 14, 2013).

[23] *Seasonal Worker Program: Participating Country Government Agency Responsibility*, DIAC, http://www.immi.gov.au/skilled/seasonal-worker/government-agency-responsibility.htm (last visited Feb. 14, 2013).

- need to pay for their own living expenses, other incidentals and part of their international and domestic travel
- are not able to bring dependants with them.[24]

Visa holders are only able to stay in Australia for the duration of their employment plus an additional four weeks to facilitate travel arrangements.[25]

4. Admission Status of Family Members

Dependent family members may not accompany workers who participate in the SWP.[26]

B. Working Holiday Visas

Australia has two programs available for young people to come to Australia for an extended vacation (up to twelve months) supplemented by short-term employment: "Working Holiday" visas (subclass 417) and "Work and Holiday" visas (subclass 462). The former are available to applicants from Belgium, Canada, the Republic of Cyprus, Denmark, Estonia, Finland, France, Germany, Hong Kong, the Republic of Ireland, Italy, Japan, the Republic of Korea, Malta, Netherlands, Norway, Sweden, Taiwan, and the United Kingdom;[27] the latter to those from Argentina, Bangladesh, Chile, Indonesia, Malaysia, Thailand, Turkey, and the U.S, with different arrangements applying depending on the reciprocal agreements with these countries.[28] The Work and Holiday visa available to U.S. citizens will be used as an example for the purposes of this report.

1. Eligibility

In addition to meeting the standard health and character requirements, and signing an Australian Values statement, applicants for either of the working holiday programs must be between eighteen and thirty years old at the time of applying.[29] Both visas also require evidence that the

[24] *Seasonal Worker Program: About this Program*, DIAC, http://www.immi.gov.au/skilled/seasonal-worker/swp.htm (last visited Feb. 14, 2013).

[25] *Seasonal Worker Program: How this Program Works*, DIAC, http://www.immi.gov.au/skilled/seasonal-worker/how-program-works.htm (last visited Feb. 21, 2013).

[26] *Id*.

[27] *Working Holiday Visa (Subclass 417)*, DIAC, http://www.immi.gov.au/visitors/working-holiday/417/countries.htm (last visited Feb. 21, 2013).

[28] *Work and Holiday Visa (Subclass 462)*, DIAC, http://www.immi.gov.au/visitors/working-holiday/462/ (last visited Feb. 21, 2013). Australia previously also had an arrangement with Iran that has now ended. Iranian citizens currently in Australia on a Work and Holiday visa can extend their stay by applying for up to two further Work and Holiday visas. *Work and Holiday Visa Options for Citizens of Iran*, DIAC, http://www.immi.gov.au/visitors/working-holiday/462/iran/ (last visited Feb. 21, 2013).

[29] *Applicant: First Working Holiday Visa*, DIAC, http://www.immi.gov.au/visitors/working-holiday/417/eligibility-first.htm; *Work and Holiday Visa (Subclass 462) – United States of America: Eligibility*, DIAC, http://www.immi.gov.au/visitors/working-holiday/462/usa/eligibility.htm (both last visited Feb. 21, 2013).

applicant has sufficient funds to support themselves "for the initial stage" of the vacation and must also have a return or onward ticket or the funds for the fare to depart Australia.[30]

Subclass 462 (U.S.) visa applicants must have graduated from high school or completed an equivalent qualification in order to be eligible for the program.[31]

2. Recruitment and Sponsorship

Employer sponsorship is not required for applicants to obtain working holiday visas or to work in Australia.

3. Visa Conditions

Visa holders on the two programs must enter Australia within twelve months of a visa being granted. Various conditions may be included in a visa grant notice.[32]

Subclass 417 and 462 (U.S.) visas allow holders to do any kind of work over the course of their twelve months in Australia, but they cannot work for more than six months for any one employer.[33] They can also study for up to four months.[34]

Subclass 417 visa holders can extend their stay in Australia, either by applying for a second Working Holiday visa or any other visa for which they are eligible (either temporary or permanent).[35] However, subclass 462 (U.S.) visa holders can only apply for a second Work and Holiday visa if their visa is granted without a "No Further Stay" condition. They are also not generally eligible to apply for most skilled and student visas while they are in the country.[36]

4. Admission Status of Family Members

Working holiday visas are available for individual applicants only; each traveler must obtain a visa if they wish to travel to Australia.[37] Subclass 417 and 462 (U.S.) visas do not allow people to bring dependent children with them to Australia.[38]

---

[30] *Id.* In general, AU$5,000 is considered sufficient.

[31] *Work and Holiday Visa (Subclass 462) – United States of America: Eligibility*, *supra* note 29.

[32] *Work and Holiday Visa (Subclass 462) – United States of America: How this Visa Works*, DIAC, http://www.immi.gov.au/visitors/working-holiday/462/usa/how-the-visa-works.htm (last visited Feb. 21, 2013).

[33] *Work and Holiday Visa (Subclass 462) – United States of America: Eligibility*, *supra* note 29.

[34] *Working Holiday Visa (Subclass 417): Applicant Obligations*, DIAC, http://www.immi.gov.au/visitors/working-holiday/417/obligations.htm (last visited Feb. 21, 2013).

[35] *Working Holiday Visa (Subclass 417): How this Visa Works*, DIAC, http://www.immi.gov.au/visitors/working-holiday/417/how-the-visa-works.htm (last visited Feb 21, 2013).

[36] *Work and Holiday Visa (Subclass 462) – United States of America: How this Visa Works*, *supra* note 32.

[37] *Work and Holiday Visa (Subclass 462) – United States of America: Eligibility*, *supra* note 29; *Applicant: First Working Holiday Visa*, *supra* note 29.

[38] *Id.*

C. Labor Agreement Programs

Both the Enterprise Migration Agreement and Regional Migration Agreement programs involve the granting of subclass 457 visas (Temporary Work (Skilled)).[39] This is the major category of visa for employer-sponsored temporary workers. Broadly, applicants for 457 visas must be sponsored and nominated by an approved employer, and the sponsored position must be in an eligible skilled occupation that is included in the Consolidated Sponsored Occupations List (CSOL).[40] The person must have the qualifications, skills, and experience required for the position as well as meeting any license or registration requirements, and must meet English language requirements.[41]

Enterprise Migration Agreements (EMA) allows the owners of major resource projects (defined as projects with capital expenditure of more than AU$2 billion dollars and a peak workforce of more than 1,500 workers) to negotiate agreements with the government that specify particular occupations, qualifications, and English language skills that would be required of temporary workers from outside Australia. The occupations need not be included in the CSOL, and can include semiskilled roles, provided that the project can show "a genuine need that cannot be met from the Australian labour market."[42] The project must also commit to training strategies in relation to occupations for which there is a shortage, and "commit to reducing reliance on labour from outside Australia over time, with particular focus on semi-skilled labour where this is approved for the EMA."[43]

Similarly, Regional Migration Agreements (RMA) can specify semiskilled occupations not included in the CSOL, provided certain minimum requirements are met.[44] These agreements can be made between individual state or territory governments or local councils and the federal government, and "specify the occupations, numbers and visa requirements for the sponsorship of workers from outside Australia to certain regional locations."[45] Once an agreement is in place,

---

[39] *Fact Sheet 48a – Enterprise Migration Agreements*, *supra* note 13; *Fact Sheet 48c – Regional Migration Agreement*, *supra* note 14. *See also* posts on Enterprise Migration Agreements in the DIAC Migration Blog at http://migrationblog.immi.gov.au/category/enterprise-migration-agreements/ (last visited Feb. 21, 2013).

[40] *See Subclass 457 Visa Legislative Instruments*, DIAC, http://www.immi.gov.au/skilled/skilled-workers/legislative-instruments/ (last visited Feb. 21, 2013); *Fact Sheet 48b – Temporary Work (Skilled) (Subclass 457) Visa*, DIAC, http://www.immi.gov.au/media/fact-sheets/48b-temporary-business-visa.htm (last reviewed Nov. 2012); DIAC, TEMPORARY BUSINESS (LONG STAY) (SUBCLASS 457) VISA (Booklet 9, 2012), http://www.immi.gov.au/allforms/booklets/books9.pdf.

[41] *See Skilled Workers (Primary Visa Applicants) Eligibility*, DIAC, http://www.immi.gov.au/skilled/skilled-workers/sbs/eligibility-employee.htm (last visited Feb. 21, 2013).

[42] *Fact Sheet 48a – Enterprise Migration Agreements*, *supra* note 13.

[43] *Id*.

[44] *Fact Sheet 48c – Regional Migration Agreement*, *supra* note 14. *See generally* posts on the topic of Regional Migration Agreements in the DIAC Migration Blog at http://migrationblog.immi.gov.au/category/regional-migration-agreements/.

[45] *Regional Migration Agreements*, *supra* note 14.

employers in the particular area can "sponsor workers in a broader range of occupations that are currently not included in standard skilled migration programs."[46]

Under the above two targeted programs, regional and subcontracting employers sign labor agreements that meet the terms of the relevant EMA or RMA. A Labour Agreement program also exists as a standard option that allows employers or industry associations to enter agreements with the federal government that specify occupations for which there is an identified or emerging labor shortage that cannot be resolved via normal sponsorship. Under this broader program, employers can sponsor a specified number of overseas workers in nominated positions for either temporary or permanent visas.[47] Like the EMA and RMA, this program can be used to fill specialized and semiskilled positions, but "does not cater for unskilled occupations."[48]

1. Eligibility

Once the relevant agreements are in place, nominated foreign workers may apply for a visa. Applicants must have any skills, qualifications, and experience specified in the agreement, including English language skills, and must meet any mandatory licensing, registration, or professional membership requirements.[49] Standard subclass 457 requirements also apply, including the character and health criteria and Australian Values Statement, health insurance requirements, and showing a genuine intention to perform the occupation for which the applicant was nominated.[50]

2. Recruitment and Sponsorship

The subclass 457 program includes various requirements that a business must meet in order to be approved as a sponsor.[51] Sponsoring employers must comply with certain obligations that are aimed at ensuring "that the program is being used to meet genuine skills shortages, and is not being used to undercut local labour wages and conditions."[52]

---

[46] *Id*.

[47] *Labour Agreements: About this Program*, DIAC, http://www.immi.gov.au/skilled/skilled-workers/la/ (last visited Feb. 21, 2013); *see generally* posts on the topic of Labour Agreements in the DIAC Migration Blog at http://migrationblog.immi.gov.au/category/labour-agreements/.

[48] *Introducing Labour Agreements*, MIGRATION BLOG (Aug. 24, 2011), http://migrationblog.immi.gov.au/2011/08/24/introducing-labour-agreements/.

[49] *See Labour Agreements: Employee Eligibility*, DIAC, http://www.immi.gov.au/skilled/skilled-workers/la/eligibility-employee.htm (last visited Feb. 21, 2013);

[50] *See* Fact Sheet 48b – Temporary Work (Skilled) (Subclass 457) Visa, supra note 39.

[51] TEMPORARY BUSINESS (LONG STAY) (SUBCLASS 457) VISA, *supra* note 40, at 9–12.

[52] *Id*. at 13. The obligations include, for example, cooperating with inspectors, ensuring that foreign workers are provided equivalent terms and conditions of employment to what would be provided to an Australian worker, providing information to the Department of Immigration and Citizenship when certain events occur, and ensuring that the sponsored person not work in an occupation other than that identified in their nomination. *Id.* at 13–17. *See also Sponsors Obligations*, DIAC, http://www.immi.gov.au/skilled/skilled-workers/sbs/obligations-employer.htm (last visited Feb. 21, 2013).

An employer with a labor agreement is considered an approved sponsor and does not need to apply separately for sponsorship approval.[53] Such employers must meet all obligations specified in the agreement and comply with "all relevant standards and workplace legislation for wages and working conditions."[54] In the agreement programs, employers "must ensure that overseas workers receive remuneration as specified in the agreement."[55] Training obligations may also apply. For example, under the EMA program, project owners must have a comprehensive training plan that includes training in "occupations of known or anticipated shortage," and must commit to reducing reliance on foreign labor over time.[56] Subcontractors with labor agreements under this program also need to "meet one of the standard training benchmarks associated with the 457 program," which involve contributing a percentage of payroll to either a relevant industry training fund or to training of their Australian employees.[57]

3. Visa Conditions

Subclass 457 visas under the agreement programs may be valid for up to four years, depending on the terms of the relevant agreement.[58] Workers holding a subclass 457 visa must comply with certain employment conditions, including working in the occupation for which they were nominated; working for the sponsor who nominated the position; and not ceasing employment for a period of more than twenty-eight consecutive days.[59]

Subclass 457 visa holders must also comply with health insurance requirements while in Australia.[60]
Workers who hold a subclass 457 visa under a labor agreement may become eligible to apply for an employer-sponsored permanent residence visa if they meet the requirements outlined in the agreement.[61]

---

[53] *Id.* at 12.

[54] *Labour Agreements: Employer Obligations*, DIAC, http://www.immi.gov.au/skilled/skilled-workers/la/obligations-employer.htm (last visited Feb. 21, 2013).

[55] TEMPORARY BUSINESS (LONG STAY) (SUBCLASS 457) VISA, *supra* note 40, at 14.

[56] *Fact Sheet 48a – Enterprise Migration Agreements*, *supra* note 13.

[57] *Id*.

[58] *See Labour Agreements: How This Program Works*, DIAC, http://www.immi.gov.au/skilled/skilled-workers/la/how-this-program-works.htm (last visited Feb. 21, 2013).

[59] *Skilled Workers and Their Family Members' Obligations*, DIAC, http://www.immi.gov.au/skilled/skilled-workers/sbs/obligations-employee.htm (last visited Feb. 21, 2013). According to the general information on subclass 457 visas, workers with this visa may change their employer or occupation during the visa period, provided that they have received an approved nomination from the new employer. It is unclear whether this ability could be affected or amended by particular conditions that are included in either an EMA or RMA.

[60] *Id*.

[61] DIAC, REFORMS TO THE PERMANENT EMPLOYER SPONSORED VISA PROGRAM (May 2012), http://www.immi.gov.au/skilled/skilled-workers/_pdf/perm-sponsored-reforms.pdf. Under reforms introduced in 2012, a number of employer-sponsored permanent visa subclasses were replaced with two new visas: Employer Nomination Scheme and Regional Sponsored Migration Scheme. Within these two visa subclasses there are three streams: Temporary Residence Transition Stream, Direct Entry stream, and Labour Agreement stream. Each stream has particular eligibility criteria.

4. Admission Status of Family Members

Partners and dependent children and relatives may be included in an application for a subclass 457 visa, including those sponsored as a result of a labor agreement, and obtain full work and study rights if the visa is granted.[62]

[62] *See Labour Agreements: Family Member Eligibility*, DIAC, http://www.immi.gov.au/skilled/skilled-workers/la/eligibility-family.htm (last visited Feb. 21, 2013). *See also Family Members (Secondary Visa Applicants) Eligibility*, DIAC, http://www.immi.gov.au/skilled/skilled-workers/sbs/eligibility-family.htm (last visited Feb. 21, 2013).

BRAZIL

Eduardo Soares
Senior Foreign Law Specialist

SUMMARY Law No. 6,815 of August 19, 1980, defines the legal situation of aliens in Brazil. A federal agency subordinate to the Ministry of Labor regulates the issuance of work permits for the purpose of obtaining temporary visas. The duration of the contract between the alien worker and the Brazilian employer is usually used as the term for the temporary visa. Currently, Brazil does not have any program for low-skilled workers.

I. Introduction

According to Law No. 6,815 of August, 19, 1980, in order to enter Brazilian territory an alien needs a visa, which can be a transit, tourist, temporary, permanent, courtesy, official, or diplomatic one.[1]

A person under the age of eighteen, unaccompanied by his legal representative or without express authorization, cannot obtain a visa. The same rule applies to aliens considered harmful to the public order or national interests; aliens previously expelled from Brazil, except when the expulsion has been revoked; aliens sentenced or prosecuted abroad for crimes conducive to extradition under domestic law; or aliens that do not meet the health standards established by the Ministry of Health.[2] The visa requirement may be waived only in cases where there is an international agreement between Brazil and the requesting national's country of origin, as a matter of reciprocity.[3]

The visa granted to the alien by the consular authority does not imply any guarantee of entrance or permanent residence in Brazil.[4] Additionally, an alien who does not present a valid travel document or any other form of identification valid in Brazil; who presents identification that has expired, has been tampered with, or has indications of forgery; or who presents a consular visa that does not comport with the conditions established in Law No. 6,815 and in Decree No. 86,715 cannot be admitted into the country.[5]

The resident alien enjoys all rights recognized to Brazilian citizens according to the Constitution and its domestic laws,[6] and the alien must show proof of legal immigration status in the Brazilian

[1] ESTATUTO DO ESTRANGEIRO, Lei No. 6.815, de 19 de Agosto de 1980, art. 4, http://www.planalto.gov.br/ccivil_03/Leis/L6815compilado.htm.

[2] *Id.* art. 7.

[3] *Id.* art. 10.

[4] *Id.* art. 26.

[5] Decreto No. 86.715, de 10 de Dezembro de 1981, art. 51, http://www.planalto.gov.br/ccivil_03/decreto/Antigos/D86715.htm.

[6] Lei No. 6.815, art. 95.

territory as required by any authority.[7] Aliens must have specific authorization to work,[8] but the bearers of tourist, transit, or temporary visas, as well as their dependents, cannot work.[9] An employer of unauthorized aliens is subject to fines.[10]

The National Council of Immigration (Conselho Nacional de Imigração—CNIg), which is subordinate to the Ministry of Labor, is the government body in charge of immigration matters.[11] Its organization and functions are regulated by Decree No. 840 of June 22, 1993.[12]

CNIg is responsible, inter alia, for the orientation and coordination of immigration activities; preparation of immigration policies; creation of immigrant selection rules designed to provide the many sectors of the economy with specialized workmanship; promotion of studies related to immigration problems; elaboration of immigration plans; conducting of periodic surveys related to the needs for qualified international workmanship, whether permanent or temporary; settlement of disputes and solution of cases unforeseen by immigration law in regards to immigrant admissions; and provision of opinions on proposals to change immigration legislation.[13]

II. Temporary Workers

A temporary visa may be granted to an alien who intends to come to Brazil[14]

(I) on a cultural trip or study mission;
(II) on a business trip;
(III) as an artist or athlete;
(IV) as a student;
(V) as a scientist, professor, coach or other professional category, under contract or at the service of the Brazilian Government;
(VI) as a correspondent for a newspaper, magazine, radio, television or news agency.
(VII) as a minister of a religion or member of an institute of consecrated life and congregation or religious order.

The period of stay in Brazil for the cases foreseen in article 13, sections II and III of Law No. 6,815 will be of up to ninety days; in the case of section VII, up to one year; and in all others, except as provided in paragraph one of article 14, the period corresponding to the duration of the mission, the contract, or the rendering of services, which must be proven before the consular authority, and is subject to the provisions of Brazilian labor laws.[15]

[7] *Id.* art. 96.

[8] *Id.* art. 97.

[9] *Id.* art. 98.

[10] *Id.* art. 125(VII).

[11] Decreto No. 86.715, art. 142.

[12] Decreto No. 840, de 22 de Junho de 1993, http://www.planalto.gov.br/ccivil_03/decreto/D0840.htm.

[13] Decreto No. 86.715, art. 144.

[14] Lei No. 6.815, de 19 de Agosto de 1980, *supra* note 1, art. 13.

[15] *Id.* art. 14.

Paragraph 1 of article 14 of Law No. 6,815 determines that in the case of section IV of article 13, the term will be one year, renewable, if applicable, upon proof of academic success and enrollment.

A visa will only be granted to aliens referred to in sections III or V of article 13 if they meet the special requirements established by the CNIg, and provided that they are a party to an employment contract endorsed by the Ministry of Labor or, exceptionally, in cases when the rendering of services to the Brazilian government may be justified.[16]

Normative Resolution No. 74, of February 9, 2007, issued by CNIg, regulates the issuance of temporary and permanent work visas. Under CNIg's guidelines, if a company qualifies to hire an alien, either temporarily or permanently, the company is required to apply for a work permit with CNIg.[17]

The issuance of work permits for the purpose of obtaining temporary visas under article 13(V) of Law No. 6,815 is regulated by Normative Resolution No. 99 of December 12, 2012.[18] According to the Resolution, the Ministry of Labor may grant a work permit to an alien who comes to Brazil under an employment relationship, provided that the interests of Brazilian workers are respected.[19]

The work permit application must be submitted with the necessary documentation supporting the qualifications or professional experience of the applicant and must be compatible with the intended position.[20] The compatibility requirement between the qualification and the professional experience of the alien with the activity to be performed in the country, as provided in article 2 of Normative Resolution No. 99, does not apply to cases involving applications for work permits for nationals of South American countries or, exceptionally, when the compatibility of the professional profile of the foreigner with the function to be performed in Brazil can be demonstrated by other means.[21] The call for alien workers must be justified by the requesting entity.[22]

In the absence of an employment contract between an alien and a Brazilian company, a temporary visa and a work permit can be granted to a professional coming to Brazil in response to an emergency situation, for the transfer of technology, or for technical assistance purposes arising from a contract or cooperation agreement between a Brazilian company and a foreign

[16] *Id.* art. 15.

[17] MINISTÉRIO DO TRABALHO E EMPREGO, CONSELHO NACIONAL DE IMIGRAÇÃO, Resolução Normativa No. 74, de 9 de Fevereiro de 2007, art. 1, http://portal.mte.gov.br/data/files/FF8080812BA5F4B7012BAAF063E57D4A/rn_20070209_74_.pdf.

[18] MINISTÉRIO DO TRABALHO E EMPREGO, CONSELHO NACIONAL DE IMIGRAÇÃO, Resolução Normativa No. 99, de 12 de Dezembro de 2012, http://portal.mte.gov.br/data/files/8A7C816A3BAA1B30013BBE67494508E1/RN%2099.pdf.

[19] *Id.* art. 1.

[20] *Id.* art. 2.

[21] *Id.* art. 3.

[22] *Id.* art. 5.

company. In this case, the transformation of the temporary visa into a permanent one is not allowed.[23] Administrative, financial, and managerial functions are excluded from the concept of technical assistance.[24]

The work permit is valid for one year and may be extended for an equal period of time provided that its need is established.[25] An emergency situation is defined as a fortuitous situation that endangers life, the environment, property, or that has generated the interruption of production or the rendering of services.[26]

The National Council of Immigration does not have any specific program for temporary low-skilled workers.[27]

III. Recruitment and Sponsorship

A. Foreign Labor Recruiters

There is no data regarding foreign labor recruiters in Brazil or rules applicable to this issue.

B. Sponsorship

A temporary visa to work in Brazil may be granted to aliens that meet the special requirements established by CNIg, provided that they are a party to an employment contract endorsed by the Ministry of Labor or, exceptionally, in cases when aliens are rendering services to the Brazilian government. If a company qualifies to hire an alien, either temporarily or permanently, the company is required to apply for a work permit with CNIg.

On May 14, 2009, the Ministry of Labor and Employment issued Administrative Act (*Portaria*) No. 802 for the purpose of creating a simplified procedure to submit documents for entities with a large annual number of work permit requests. To this effect, an Electronic Registry of Entities Requesting Authorization for Foreign Workers (*Cadastro Eletrônico de Entidades Requerentes de Autorização para Trabalho de Estrangeiros, CERTE*) was established subordinate to the General Coordination of Immigration (*Coordenação-Geral de Imigração, CGI*).[28] Although the Act only authorized registering with CERTE entities that on December 31, 2008, had had more

[23] MINISTÉRIO DO TRABALHO E EMPREGO, CONSELHO NACIONAL DE IMIGRAÇÃO, Resolução Normativa No. 61, de 8 de Dezembro de 2004, art. 1, http://portal.mte.gov.br/data/files/FF8080812BA5F4B7012BAFF7CE364479/rn_20041208_61.pdf.

[24] *Id.* art. 1 (sole para.).

[25] *Id.* art. 4.

[26] *Id.* art. 7 (sole para.).

[27] CONSELHO NACIONAL DE IMIGRAÇÃO, http://www.portal.mte.gov.br/cni/ (last visited Feb. 12, 2013).

[28] Portaria No. 802, de 13 de Maio de 2009, art. 1, http://portal.mte.gov.br/data/files/FF8080812BA5F4B7012BA6DF9F4A1EF5/p_20090514_802.pdf.

than one hundred requests,[29] article 1(§2) authorizes CGI to allow entities that present a large number of requests to register with CERTE even if they are less than one hundred.

IV. Visa Conditions

A. Employment Relationship

Law No. 6,815 requires that aliens holding a visa allowing them to temporarily work in the country work for the employer who applied for their work permit and be subject to the provisions of the labor contract between them and the sponsoring employer.[30] CNIg may cancel the work permit when there is noncompliance with any contractual clause or breach of statutory provisions.[31]

An alien admitted to the National Territory to work for a particular company who intends to transfer to another company must, prior to the transfer, request authorization from the Ministry of Justice, which will consult with the Ministry of Labor and decide the merits of the request.[32]

B. Visa Term

The term of the visa is usually the period corresponding to the duration of the contract or rendering of services, which must be proven before the consular authority and be subject to the provisions of Brazilian labor laws.[33]

C. Visa Extension and Permanent Status

The period of stay of an alien who is the holder of a temporary visa mentioned in article 1 of Normative Resolution No. 99 of December 12, 2012[34] may be extended or converted into permanent status under the current legislation in force.[35]

The application for an extension must consider[36]

> (I) the continuous need for the alien's work in Brazil, considering the interests of the Brazilian worker;

---

[29] *Id.* §1.

[30] Lei No. 6.815, de 19 de Agosto de 1980, *supra* note 1, art. 15.

[31] Resolução Normativa No. 74, de 9 de Fevereiro de 2007, *supra* note 17, art. 5(II).

[32] Lei No. 6.815, art. 100.

[33] *Id.* art. 14.

[34] Article 1 of Normative Resolution No. 99 of December 12, 2012, determines that the Ministry of Labor may grant a work permit to an alien who comes to Brazil under an employment relationship, provided that the interests of Brazilian workers are respected. Resolução Normativa No. 99, de 12 de Dezembro de 2012, *supra* note 18.

[35] *Id.* art. 6.

[36] *Id.* art. 6(§1).

(II) compliance to the conditions established upon the granting of the work permit to the alien professional according to the applicable Normative Resolution of CNIg, and
(III) the evolution of the staff, Brazilians and aliens, of the applicant company.

The application for a conversion into permanency must consider[37]

(I) the justification presented by the alien to settle permanently in Brazil;
(II) the continuous need for the alien's work in Brazil, considering the interests of the Brazilian worker;
(III) the evolution of the staff, Brazilians and aliens, of the applicant company.

D. Quotas

According to the information available at the website of the National Council of Immigration, Brazil does not have a limit on the number of aliens allowed to come to work in its territory every year.[38] However, pursuant to the country's Labor Law, Brazilian companies with three or more employees are required to fill two thirds of their positions with Brazilian workers.[39] For the purposes of article 352 of the Brazilian Labor Law, an alien who has been residing in the country for over ten years, or has a Brazilian spouse or child, or is a Portuguese national is considered a Brazilian citizen.[40]

V. Admission Status of Family Members

Family members of temporary workers are listed on the application for a work permit as dependents of the main applicant, who must have a contractual relationship with a Brazilian company.[41] According to article 98 of Law No. 6.815, dependents of temporary visa holders are not allowed to engage in paid activities in the country. After obtaining a work permit, the main applicant, along with his dependents, is issued a temporary visa.[42]

[37] *Id.* art. 6(§2).

[38] CONSELHO NACIONAL DE IMIGRAÇÃO, http://www.portal.mte.gov.br/cni/ (last visited Feb. 12, 2013).

[39] CONSOLIDAÇÃO DAS LEIS DO TRABALHO, Decreto-Lei No. 5.452, de 1 de Maio de 1943, arts. 352, 354, http://www.planalto.gov.br/ccivil_03/Decreto-Lei/Del5452.htm.

[40] *Id.* art. 353.

[41] Resolução Normativa No. 74, de 9 de Fevereiro de 2007, *supra* note 17, art. 1.

[42] Resolução Normativa No. 99, de 12 de Dezembro de 2012, *supra* note 18, art. 1.

CANADA

Tariq Ahmad
Legal Research Analyst

SUMMARY Immigration to Canada is predominantly regulated by the Immigration and Refugee Protection Act and its regulations. The Temporary Foreign Worker Program is administered and serviced by Citizenship and Immigration Canada (CIC), Service Canada, and the Canada Border Services Agency.

Programs for the hiring of foreign low-skilled workers at the federal level include the Low Skilled Worker Pilot (C & D) project (general and agricultural stream), Live-in Caregiver Program, and Seasonal Agricultural Worker Program.

I. Introduction

The Immigration and Refugee Protection Act[1] and its regulations[2] are the predominant federal laws that regulate immigration to Canada. There are four main programs that allow eligible lower-skilled workers to enter and work in the country on a temporary basis. The provinces and territories also have their own Provincial Nominee Programs, which may be available to lower-skilled workers.[3]

The federal government of Canada administers the Temporary Foreign Worker Program,[4] which authorizes eligible foreign workers to work in Canada for an approved period of time if "employers can demonstrate that they are unable to find suitable Canadians/permanent residents to fill the jobs and that the entry of these workers will not have a negative impact on the Canadian labour market."[5] According to the Citizenship and Immigration Canada (CIC) website, "[e]mployers from all types of businesses can recruit foreign workers with a wide range of skills to meet temporary labour shortages."[6]

In 2002, Canada instituted a Low Skilled Worker Pilot (C & D) project, which allows employers to hire temporary foreign workers (TFWs) with "lower levels of formal training."[7] In Canada,

---

[1] Immigration and Refugee Protection Act, S.C. 2001, c. 27, http://laws-lois.justice.gc.ca/eng/acts/I-2.5/index.html.

[2] Immigration and Refugee Protection Regulations (SOR/2002-227), http://laws-lois.justice.gc.ca/eng/regulations/SOR-2002-227/index.html.

[3] *Provincial Nominees*, CITIZENSHIP AND IMMIGRATION CANADA (CIC), http://www.cic.gc.ca/english/immigrate/provincial/index.asp (last updated Oct. 22, 2012).

[4] *Temporary Foreign Worker Program,* HUMAN RESOURCES AND SKILLS DEVELOPMENT CANADA (HRSDC), http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/index.shtml (last updated Feb. 4, 2013).

[5] *How to Hire a Temporary Foreign Worker (TFW) A Guidebook for Employers*, CIC, http://www.cic.gc.ca/english/resources/publications/tfw-guide.asp (last updated Jan. 18, 2013).

[6] *Id.*

[7] *Foreign Workers*, HRSDC, http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/ei_tfw/orllft_tfw.shtml (last updated Aug. 26, 2011).

"skill level" requirements are defined by the National Occupational Classification (NOC) system. Under this system, level C is defined as "Occupations requiring the completion of secondary school and up to two years of occupation-specific training"[8] and level D as "Occupations which can be performed after receiving a short work demonstration or on-the-job training."[9] The pilot project also has an agricultural stream.[10]

In addition, Canada receives low-skilled workers as part of its Live-in Caregiver Program and Seasonal Agricultural Worker Program. The Live-in Caregiver Program "allows families to hire a foreign live-in caregiver, often called a nanny, when Canadian citizens and permanent residents are not available."[11] The Seasonal Agricultural Worker Program "matches workers from Mexico and the Caribbean countries with Canadian farmers who need temporary support during planting and harvesting seasons, when qualified Canadians or permanent residents are not available."[12]

Three departments jointly administer the temporary labor migration programs: CIC, Human Resources and Skills Development Canada/Service Canada, and the Canada Border Services Agency.[13]

II. Eligibility for Admission as a "Low-skilled" Temporary Worker

The following requirements apply to all of the four temporary labor migration programs. Before a work permit for a "low-skilled" temporary worker can be issued, the Canadian employer may have to obtain a positive Labour Market Opinion (LMO, also known as an employment confirmation) from Service Canada. An LMO "assesses what impact hiring a temporary foreign worker would have on the job market. It also ensures that the offer of employment is genuine and that the wages and working conditions are consistent with those of Canadians."[14]

---

[8] FAY FARADAY, SUMMARY REPORT: MADE IN CANADA – HOW THE LAW CONSTRUCTS MIGRANT WORKERS' INSECURITY 9 (Metcalf Foundation, Sept. 2012), http://metcalffoundation.com/wp-content/uploads/2012/09/Made-in-Canada-Summary-Report.pdf. For the full report *see* http://metcalffoundation.com/wp-content/uploads/2012/09/Made-in-Canada-Full-Report.pdf.

[9] *Id*.

[10] *Agricultural Stream*, HRSDC, http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/agriculture/description.shtml (last modified Nov. 21, 2012).

[11] *Live-in Caregiver Program: Program Description*, HRSDC, http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/caregiver/description.shtml (last updated July 25, 2012); *see also Determine Your Eligibility—Hiring a Live-in Caregiver*, CIC, http://www.cic.gc.ca/english/work/apply-who-caregiver.asp (last updated Oct. 19, 2012).

[12] *Seasonal Agricultural Worker Program*, HRSDC, http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/ei_tfw/sawp_tfw.shtml (last updated June 10, 2009). For additional and more detailed information, *see Seasonal Agricultural Worker Program: Requirements* HRSDC, http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/sawp/requirements.shtml (last updated Feb. 15, 2013).

[13] *How to Hire a Temporary Foreign Worker (TFW): A Guidebook for Employers*, *supra* note 5.

[14] *Temporary Foreign Worker Program: Stream for Lower-skilled Occupations: Questions and Answers*, HRSDC, http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/questions-answers/general.shtml (last updated Oct. 30, 2012).

After a positive or neutral LMO is granted, the migrant worker must apply to CIC for a work permit. Applicants applying for a temporary work permit must meet specified eligibility criteria. Under the standard criteria, an applicant must

- satisfy an officer that he or she will leave Canada at the end of his or her employment,
- show that he or she has enough money to take care of him- or herself and relevant family members while in Canada and to return home,
- be law-abiding and have no record of criminal activity (applicants may be asked to provide a Police Clearance Certificate),
- "not be a danger to the security of Canada,"
- "be in good health and complete a medical examination, if required,"
- "not intend to engage in employment with an employer on the list of ineligible employers,"
- not have worked in Canada for one or more periods totaling four years after April 1, 2011 (with certain exceptions), and
- "provide any additional documents requested by the officer to establish admissibility."[15]

In addition, each program has its own eligibility criteria for both employees and employers.

A. Admission Requirements for Seasonal Agricultural Worker Program

To qualify as part of this program the foreign worker must (1) have experience in farming, (2) be at least eighteen years of age, (3) be a citizen of one of the participating countries, and (4) be able to satisfy the Canadian immigration laws and laws of the worker's home country.[16] The foreign worker must also accept and sign an employment contract. According to HRSDC, the governments of participating countries must ensure that the men and women selected to work temporarily in Canada meet all the requirements of the SAWP.[17]

Employers must also meet three criteria: (1) the TFWs hired must be citizens from Mexico or participating Caribbean countries; (2) production must be in specific commodity sectors, and (3) the TFWs must work on the farm in primary agriculture.[18] The employer is also required to cover certain costs of the worker. Under the program, an employer

- partially pays for round-trip airfare between the worker's country of residence and Canada based on an agreement reached by both countries (except for British Columbia where employers pay full airfare);

[15] *Determine Your Eligibility — Work in Canada,* CIC, http://www.cic.gc.ca/english/work/apply-who-eligible.asp (last updated Oct. 12, 2012).

[16] *Seasonal Agricultural Worker Program*: *Description*, HRSDC, http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/sawp/description.shtml (last updated Oct. 17, 2012).

[17] *Id.*

[18] *Id*.

- pays costs of travel between the airport (or other point of arrival) in Canada and the place of employment and worksites;
- supplies free housing (except in British Columbia) that meets municipal building requirements and health standards set by the province where the work is being done;
- provides a proper cooking area with pots and pans if workers choose to make their own meals; employers who provide meals may deduct up to $6.50 per day from the worker's wages to offset costs;
- ensures workers are registered with the provincial health insurance plan; and
- provides free, on-the-job injury and illness insurance (called Workers' Compensation).[19]

B. Admission Requirements for C & D Pilot Project

In addition to possibly being required to obtain an LMO for a temporary worker, employers must agree to the following:

- Meet the minimum advertisement efforts required;
- Pay round trip transportation costs;
- Ensure medical insurance coverage is provided at no cost to the foreign worker until he/she is eligible for provincial health insurance;
- Confirm the availability of affordable and suitable accommodation;
- Sign an employment contract;
- Offer wages that meet the prevailing rate for the occupation and region where the worker will be employed or, if the position is unionized, offer the wage rate as established in the collective agreement;
- Provide working conditions that are equivalent to those offered to Canadians in the same occupation;
- Agree to review and adjust (if necessary) the worker's wages after 12 months of employment to ensure the worker continues to receive the prevailing wage rate of the occupation and region where he/she is employed.[20]

After a copy of the Human Resources and Skills Development Canada/Service Canada confirmation letter or LMO has been received by the employer it must be sent to the foreign worker with a signed employment contract. The worker then must sign the employment contract and apply to CIC for a work permit. The worker must include the confirmation letter and employment contract when he or she applies.[21]

C. Admission Requirements for Live-in Caregiver Program

Under this program, employers must meet certain requirements before they can hire a foreign live-in caregiver, which include

---

[19] *Seasonal Agricultural Worker Program: Description*, *supra* note 16.

[20] *Temporary Foreign Worker Program: Stream for Lower-skilled Occupations: Questions and Answers*, *supra* note 14.

[21] *Temporary Foreign Worker Program: Stream for Lower-skilled Occupations*, HRSDC, http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/lowskill.shtml (last updated Aug. 23, 2012).

- having made a sufficient effort to first fill the position with a Canadian, a permanent resident, or a foreign worker already in Canada;
- having sufficient income to pay a live-in caregiver;
- providing acceptable accommodation in his or her home;
- making a "job offer that has primary caregiving duties for a child or an elderly or disabled person (a job offer with the primary duties of a housecleaner, for example, is not acceptable under the Live-in Caregiver Program (LCP), but could be appropriate under the Temporary Foreign Worker Program);" and
- submitting an application for an LMO with the employment contract to Human Resources and Skills Development Canada/Service Canada (HRSDC/SC).[22]

According to the CIC website, caregivers will be "carefully screened" by a CIC visa officer before they enter Canada and must meet the eligibility requirements of the Live-in Caregiver Program.[23] The requirements for this program include

> - the successful completion of the equivalent of a Canadian secondary school
> - at least six months of full-time classroom training or at least one year of work experience as a caregiver or in a related field or occupation within the last three years, including at least six months of continuous employment with one employer
> - the ability to speak, read and understand English or French, so that they can function on their own in an unsupervised setting
> - the passing of medical, security and criminal clearances
> - the signed written employment contract with an employer in Canada[.][24]

III. Recruitment and Sponsorship

Government involvement in the recruitment and sponsorship is high in the Seasonal Agricultural Worker Program since it is administered through bilateral agreements between Canada and the participating countries (Mexico and other Caribbean countries). Foreign governments are responsible for recruiting and selecting the TFWs, maintaining a pool of qualified workers, and appointing representatives to assist workers in Canada.[25]

Employers are responsible for recruiting and selecting the temporary worker under the C & D pilot project, in which "recruiting happens privately, often through recruitment agencies based in Canada or abroad."[26]

---

[22] *Determine Your Eligibility—Hiring a Live-in Caregiver*, *supra* note 11.

[23] *Id.*

[24] *Id.*

[25] *Seasonal Agricultural Worker Program: Description*, HRSDC, http://www.hrsdc.gc.ca/eng/workplaceskills/foreign_workers/sawp/description.shtml

[26] FARADAY, *supra* note 8, at 16.

IV. Work Permit Conditions

An employer can hire a temporary worker for twenty-four months under the C & D pilot program. Before 2009, after the twenty-four-month period was completed the foreign national was required to return to their home country for a minimum of four months before applying for a new work permit under the pilot program. After 2009, the work permit can be extended and a "work permit application cannot be refused solely because a temporary foreign worker has already worked in Canada for twenty-four months; or has not returned home for a minimum period of four months."[27] The employer must apply for a new LMO from Service Canada to extend a job offer. With limited exceptions, "workers with these skills cannot apply for permanent residence; they are granted only temporary migrant status."[28]

Under the Seasonal Agricultural Worker Program, "employers can hire TFWs from participating countries for a maximum duration of eight months, between January 1 and December 15, provided they are able to offer the workers a minimum of 240 hours of work within a period of six weeks or less."[29] According to CIC, the work permit under this program cannot be extended. The worker "must leave Canada no later than December 15th."[30] Furthermore, the employer must request authorization from Human Resources and Skills Development Canada (HRSDC) to hire the worker each season, and the worker must go back to his home country before he can apply for another work permit.[31]

Work permits for the Live-in Caregivers Program extend to up to four years plus three months and are renewable. Workers under the Live-in Caregivers Program can apply to become permanent residents as long as they meet certain requirements.[32]

Low-skilled workers may also be eligible to gain permanent residency through Provincial Nominee Programs.[33]

V. Admission Status of Family Members

Spouses[34] or dependent children[35] of temporary workers are not given an automatic right of entry. They must either apply for a temporary residence visa, separate work permit, or student permit depending on whether they meet the specific requirements for each authorization.

---

[27] *Pilot Project for Workers with Lower Levels of Formal Training*, CIC, http://www.cic.gc.ca/english/work/low-skill.asp.

[28] FARADAY, *supra* note 8, at 9.

[29] *Seasonal Agricultural Worker Program: Description*, *supra* note 16.

[30] *Can I Apply To Extend My Seasonal Agricultural Worker Program work permit?*, CIC, http://www.cic.gc.ca/english/helpcentre/answer.asp?q=182&t=17 (last modified Nov. 7, 2012).

[31] *Id.*

[32] *Become a Permanent Resident – Live-in Caregivers*, CIC, http://www.cic.gc.ca/english/work/caregiver/permanent_resident.asp (last modified Oct. 19, 2012).

[33] *Can Lower-skilled Workers Apply for Permanent Residence under the Canadian Experience Class?*, CIC, http://www.cic.gc.ca/english/helpcentre/answer.asp?q=385&t=6 (last modified Nov. 7, 2012).

In most cases, if the accompanying spouse or common-law partner or children wish to work they must apply for a separate work permit for a specific job, known as a "closed" work permit. However, the spouse and children of temporary workers with a "lower level of formal training" may be eligible for an open work permit through an active pilot project in certain provinces and territories.[36] Under this pilot project, such as that in place in British Columbia, "[f]amily members of seasonal agricultural workers (including the Seasonal Agricultural Worker Program participants), Live-in-Caregivers (including non-LCP live-in caregivers) and temporary foreign workers . . . who have work permits issued under the International Experience Canada Program" are not eligible for open work permits.[37]

---

[34] *Spouses and Common-law Partners: Accompanying a Student or a Temporary worker*, GOVERNMENT OF CANADA, http://www.canadainternational.gc.ca/united_kingdom-royaume_uni/visas/spouses-conjoints.aspx?view=d (last modified Jan. 13, 2012).

[35] *Minor and Dependent Children,* GOVERNMENT OF CANADA, http://www.canadainternational.gc.ca/united_kingdom-royaume_uni/visas/minors-mineurs.aspx?view=d (last modified Feb. 12, 2013).

[36] *Provincial/Territorial Pilot Projects—Work in Canada*, CIC, http://www.cic.gc.ca/english/work/occupations.asp (last modified Feb. 15, 2013).

[37] CIC Announces Pilot Project for Spouses and Dependent Children of Temporary Foreign Workers to Obtain Open Work Permits in BC – Effective August 2011, BOMZA LAW GROUP (Aug. 2011), http://www.canadausvisas.com/resource-centre/immigration-alerts-a-events/181-cic-announces-pilot-proect-for-spouses-and-dependent-children-of-temporary-foreign-workers-to-obtain-open-work-permits-in-bc-effective-august-2011.

CHINA

Laney Zhang
Senior Foreign Law Specialist

SUMMARY To enter and work in China, aliens must obtain a work visa, an employment permit, and a residence permit. Aliens must work for the employer indicated on the employment permit. The permit may be altered if the alien switches employers within the same geographic area indicated in the permit, and remains in the original occupation. A new permit must be obtained if the alien seeks employment outside the area, or within the area but for a different employer and in a different occupation.

The country's immigration rules allow corporate executives, professors, researchers, foreigners having made great and outstanding contributions to China, and those who are specially needed by the country to apply for permanent residency.

I. Introduction

Although China is not a country that has traditionally attracted large numbers of immigrants, the number of foreigners seeking employment in the country has been rapidly increasing over recent decades. In 2000, there were about 74,000 foreigners employed in China. By the end of 2011, the number of foreigners employed in China had reached 220,000, which accounted for 37% of the total number of foreigners residing in the country.[1]

As a country with a 1.34 billion population and abundant labor resources, China has adopted laws and regulations strictly prohibiting the illegal employment of aliens. The immigration law system focuses on attracting high-level, talented researchers and skilled workers especially needed by the country, with restrictive controls over low-skilled workers' access to the labor market. There are no specific programs available to admit low-skilled foreign workers.

A. Legislative Framework

China does not have a single immigration act or foreigners' act. The primarily applicable legislation on entry into the country is the Law on the Administration of Exit and Entry of Aliens and its implementing rules. On June 30, 2012, the Law on Administration of Exit and Entry (Exit and Entry Law) was passed. The new Law will replace the Law on the Administration of Exit and Entry of Aliens upon taking effect on July 1, 2013.[2]

---

[1] Yang Huanning, *Guowuyuan Guanyu Waiguoren Ruchujing ji Juliu, Jiuye Guanli Gongzuo Qingkuang de Baogao* [*Report of the State Council on the Administration of Entry-Exit, Residence, and Employment of Foreigners*], NATIONAL PEOPLE'S CONGRESS (Apr. 25, 2012), http://www.npc.gov.cn/wxzl/gongbao/2012-08/21/content_1736409.htm.

[2] Zhonghua Renmin Gongheguo Chujing Rujing Guanli Fa [The Exit and Entry Administration Law of the People's Republic of China] (promulgated by the Standing Committee of the National People's Congress), http://www.gov.cn/flfg/2012-06/30/content_2174944.htm.

The new Exit and Entry Law clearly requires aliens to obtain both a work permit and a residence permit in order to work in China, and prohibits Chinese employers from hiring any aliens without the permits. Detailed rules controlling the employment of aliens in China are to be formulated by the State Council, according to the Exit and Entry Law.[3] The current rules regulating the employment of aliens are primarily provided in the Provisions on the Administration of Employment of Foreigners (Provisions), jointly issued by several departments under the State Council in 1996.[4]

II. Eligibility for Admission

The Provisions generally require an alien worker to be over age eighteen and in good health, have necessary professional skills and corresponding work experiences required by the job he or she intends to take, not have a criminal record, and have found an employer.[5]

In order to enter China and be eligible to work, an alien must obtain a work visa, an employment permit, and a residence permit.[6] First, the alien worker must visit the Chinese embassy or consulate where he or she resides to apply for a Z visa, the work visa, to enter China.[7] Within fifteen days after the alien enters China, the employer must apply for an employment permit for the alien.[8] After obtaining the employment permit and within thirty days after entering China, the alien must apply for a residence permit with the public security organs. The term of stay is specified in the residence permit, which may be determined according to the term of the employment permit.[9] According to the Exit and Entry Law, the duration of such a residence permit may vary from ninety days to five years.[10]

Alien workers employed in China without a proper employment permit or residence permit will be deemed illegal, which is subject to a fine of 5,000 yuan (about US$800) to 20,000 yuan.[11] Where the public security organs deem the circumstances to be serious, the alien may also be

---

[3] *Id.* art. 41.

[4] Waiguo Ren Zai Zhongguo Jiuye Guanli Guiding [Provisions on the Administration of Employment of Foreigners in China] (issued by the Ministry of Labor, Ministry of Public Security, Ministry of Foreign Affairs, and Ministry of Foreign Trade and Economic Cooperation on Jan. 22, 1996, amended Nov. 12, 2010) (hereinafter, Provisions), http://fgk.chinalaw.gov.cn/article/bmgz/201011/20101100336545.shtml.

[5] *Id.* art. 7.

[6] *Id.* art. 8.

[7] Zhonghua Renmin Gongheguo Waiguoren Rujing Chujing Guanli Fa Shishi Xize [Implementation Measures of the Exit and Entry Administration Law of the People's Republic of China] (approved by the State Council on Dec. 3, 1986, *last amended* Apr. 24, 2010), art. 4, http://www.gov.cn/zwgk/2010-04/27/content_1593708.htm.

[8] *Id.* art. 16.

[9] *Id.* art. 17.

[10] Zhonghua Renmin Gongheguo Chujing Rujing Guanli Fa [The Exit and Entry Administration Law of the People's Republic of China] (promulgated by the Standing Committee of the National People's Congress), art. 30, http://www.gov.cn/flfg/2012-06/30/content_2174944.htm.

[11] *Id.* arts. 43 & 80.

detained for five to fifteen days.[12] Illegally employing aliens is subject to a fine of 10,000 yuan for each illegally employed alien, with a maximum of 100,000 yuan, and any illegal gains are confiscated.[13]

III. Recruitment and Sponsorship

According to the Provisions, employers intending to employ an alien must first apply to the government authorities for approval to hire that alien, and obtain an alien employment license.[14] The alien worker must present the license when applying for a work visa to enter China.[15] The employer may then conclude a labor contract with the alien after being approved and obtaining the alien employment license.[16]

The Provisions do not require alien workers to be recruited by foreign labor recruiters.

IV. Visa Conditions

Aliens must work for the employer indicated on the employment permit.[17] The labor contract may not exceed five years, which is renewable, and the employment permit needs to be renewed accordingly.[18]

According to the Provisions, an employment permit is valid only when used in the geographic area specified in that permit.[19] The alien may switch employers within the same geographic area, but must engage in the original occupation and be approved by the original authority issuing the permit; the permit can be altered in such situations.[20] Where an alien seeks employment outside the area specified by the permit, or within the area but for a different employer and in a different occupation, he must apply for a new employment permit.[21]

China does not have a quota or cap system for immigration purposes. Rules on permanent status were first introduced into Chinese law in 2004, when the Measures for Administration of Examination and Approval of Foreigners' Permanent Residence in China were issued.[22] The

[12] *Id.* art. 80.

[13] *Id*.

[14] *Id.* art. 5.

[15] *Id.* art. 15.

[16] *Id.* art. 5.

[17] Provisions, *supra* note 4, art. 24.

[18] *Id.* arts. 18 & 19.

[19] *Id.* art. 16.

[20] *Id.* art. 24.

[21] *Id*.

[22] Waiguoren Zai Zhongguo Yongjiu Juliu Shenpi Guanli Banfa [Measures for Administration of Examination and Approval of Foreigners' Permanent Residence in China] (Order No. 74 of the Ministry of Public Security and Ministry of Foreign Affairs, Aug. 25, 2004), http://www.gov.cn/gongbao/content/2005/content_64214.htm.

Measures list the categories of individuals who may apply for permanent residency, which, outside those who may obtain residency through family connections, include

- investors who have made direct investments in China with stable operations and good tax payment records for three successive years;
- corporate executives, professors, and researchers who have held a post in China for at least four consecutive years, with a minimum period of physical presence in China of three cumulative years within the four years and with good tax payment records; and
- foreigners having made great and outstanding contributions to China and those being specially needed by the country.[23]

V. Admission Status of Family Members

Family members accompanying work visa holders may also enter China with a Z visa.[24] The accompanying family members may not work in China unless they adjust their status and obtain their own employment permits and residence permits.[25]

[23] Waiguoren Zai Zhongguo Yongjiu Juliu Shenpi Guanli Banfa [Measures for Administration of Examination and Approval of Foreigners' Permanent Residence in China] (Order No. 74 of the Ministry of Public Security and Ministry of Foreign Affairs, Aug. 25, 2004), http://www.gov.cn/gongbao/content/2005/content_64214.htm.

[24] Zhonghua Renmin Gongheguo Waiguoren Rujing Chujing Guanli Fa Shishi Xize [Implementation Measures of the Exit and Entry Administration Law of the People's Republic of China] (approved by the State Council on Dec. 3, 1986, *last amended* Apr. 24, 2010), art. 4, http://www.gov.cn/zwgk/2010-04/27/content_1593708.htm.

[25] Provisions, *supra* note 4, art. 8.

GERMANY

Edith Palmer, Chief
Foreign, Comparative, and
International Law Division II

SUMMARY Until 2011, German programs for the temporary, strictly time-limited admittance of workers applied to seasonal workers and a few other specified categories of workers. They could work in Germany for periods of no longer than six or nine months, on the basis of agreements with their home countries. The workers were mostly unskilled and they came from Eastern Europe. The short periods for which these residence permits were granted and tight German controls of entry, exit, and adherence to the terms of the permits prevented the workers from prolonging their stay or bringing their families, thus eliminating any possibility of becoming permanent.

These programs implemented the German immigration policy of encouraging the immigration of skilled and highly skilled workers while discouraging the immigration of unskilled workers. In Germany, the temporary worker programs were administered by the Federal Employment Office which assigned workers to specific employers. Waiting periods applied before a seasonal worker could come back, thus further eliminating any opportunity of the workers to become permanent.

Today these programs have become largely obsolete because, with the exception of Croatia, all the East European countries that formerly participated in the programs have become European Union Member States and their citizens now have the right to move to Germany and work there.

I. Introduction

In the 1960s, Germany recruited and admitted large numbers of foreign workers in order to increase German industrial production. At the time it was generally assumed that the then admitted "guest workers" would leave eventually.[1] Instead, these workers, most of them Turkish, remained in Germany, brought their families, and now about ten percent of the German population has a migrant background.[2] The path to permanent immigration status for Turkish workers in Germany and their family reunification opportunities was greatly enhanced by the European Union (EU) Association Agreement with Turkey (*see* Report on the EU-Turkey Association Agreement, *infra*).

[1] *Anwerbung von Arbeitskräften*, BUNDESMINISTERIUM DES INNEREN, http://www.zuwanderung.de/ZUW/DE/Zuwanderung_hat_Geschichte/Anwerbung/Anwerbung_node.html#doc921694bodyText3 (last visited Feb. 20, 2013).

[2] H. Hartnell, *Citizenship and Migration in the European Union and Germany*, 24 BERKELEY J. INT'L L. 330 (2006). Work-related immigration was not the only path by which foreigners flocked to Germany. Many refugees and asylum petitions also came to Germany and were able to remain there. *Id.*

Since 1973 Germany has pursued an immigration policy that limits immigration to skilled or highly skilled workers[3] and admits unskilled workers only for short periods, thus preventing them from becoming permanent or bringing their families.[4] Until recently, the most commonly used temporary worker programs[5] admitted seasonal workers and workers deployed by foreign contractors. These programs brought short-term labor to Germany from Eastern Europe, yet they became largely obsolete in 2011 due to enlargements of the EU.[6]

II. European Enlargement and German Temporary Worker Programs

In 2004, eight East European countries became EU Member States,[7] including Poland, from where many temporary workers had previously come to Germany. Although EU membership of a country generally grants its citizens the right to work and reside freely within the territory of the EU member states,[8] the accession treaty for the new members permitted old Member States to postpone freedom of movement for the workers of the new countries by seven years, and Germany took advantage of this exception.[9] Since January 1, 2011, however, the workers from these East European countries, many of them neighboring countries of Germany, have the right to work in Germany[10] without requiring a work permit.[11] Instead, they may settle in Germany under the observance of minimal formalities that apply to EU citizens and residents in general.[12] Bulgaria and Romania became EU Member States in 2007,[13] yet until December 31, 2011, they still required a work permit for seasonal work in Germany. Since January 1, 2012, workers from these countries enjoy the same EU freedom of movement as the workers from the Member States admitted in 2004.[14] Croatia is the only East European country for which the German temporary

---

[3] Artin Strunden & Michaela Schubert, *Deutschland gibt sich Blue-Card "Plus,"* Zeitschrift für Ausländerrecht und Ausländerpolitik 270 (2012); Günter Renner, Ausländerrecht in Deutschland 25 (1998).

[4] *Anwerbung*, *supra* note 1; JAN BERGMANN ET AL., AUSLÄNDERRECHT 412 (9th ed. 2011).

[5] In Germany, temporary workers are not referred to as "guest workers" because that term is used for trainees who come to Germany under exchange agreements with foreign countries. *See* Arbeitsgenehmigungsverordnung [ArGV] [Work Permit Regulation] Sept. 17, 1998, BGBl. I at 2899, as amended, § 10.

[6] Rainer Schlegel, *Arbeitnehmerfreizügigkeit für EU-8 seit Mai 2011*, ARBEIT UND RECHT 384 (2011).

[7] In 2004 the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovakia and Slovenia became Member States of the European Union. *See*, *From 6 to 27 Members*, EUROPEAN COMMISSION, http://ec.europa.eu/enlargement/policy/from-6-to-27-members/index_en.htm (last visited Feb. 20, 2013).

[8] Consolidated Version of the Treaty on the Functioning of the European Union [TFEU], 2012 OFFICIAL JOURNAL OF THE EUROPEAN UNION (C 326) 47, art. 21, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2012:326:0047:0200:EN:PDF.

[9] Stefan Kadelbach, *Union Citizenship*, *in* PRINCIPLES OF EUROPEAN CONSTITUTIONAL LAW 454 (Arnim von Bogdandy & Jürgen Bast eds., 2010).

[10] Schlegel, *supra* note 6.

[11] Dritte Verordnung zur Änderung der Arbeitsgenehmigungsverordnung [Third Amending Regulation to the Work Permit Regulation], Nov. 8, 2010, BUNDESGESETZBLATT [BGBL.] I at 1536.

[12] Freizügigkeitsgesetz/EU [Freedom of Movement Act/EU], July 30, 2004, BGBL. I at 1950.

[13] EUROPEAN COMMISSION, *supra* note 7.

[14] Arbeitsgenehmigungsverordnung § 12e, as introduced by Arbeitsgenehmigungsrechtsänderungsverordnung, Dec. 12, 2011, BGBL. I at 2012.

worker program still is relevant in its originally enacted form.[15] Until Croatia becomes an EU Member State, which is scheduled to happen in July 2013,[16] Croatia is still a "third country,"[17] that is, a country to which German immigration law for non-EU countries applies.

Even though the 2004 accession treaties for the new East European EU Member States granted Germany the option of postponing freedom of movement to the workers from these countries,[18] the European Court of Justice interpreted the scope of this exception narrowly. In Case C-546/07[19] the Court held in 2010 that Germany violated article 46 of the Treaty on the Functioning of the European Union (TFEU)[20] when it required a work permit from Polish workers who were deployed by a Polish contractor to work on a specific project in Germany. Article 46 TFEU requires the Member States to refrain from imposing domestic laws or practices that would impede the freedom of movement of workers.

III. The Temporary Worker Program as Generally Applied until 2011

A. Overview

The following chapters describe the various forms of admission for temporary workers as they applied to workers from Eastern Europe prior to 2011. The German laws on the admission of workers from non-EU countries (third countries) are still on the books and for a short time they will still apply to Croatia.[21] In addition, some of the provisions of these laws continue to apply to workers from other non-EU countries.[22] For the most part, however, these provisions have become obsolete because they presupposed the applicability of bilateral agreements with East European countries. The following chapter describes the system as it functioned until 2010 as an example of how a restrictive guest worker system could be structured.

---

[15] *Merkblatt für Arbeitgeber zur Vermittlung und Beschäftigung kroatischer Saisonarbeitsnehmer* [*Notice for Employers on the Placement and Employment of Croatian Seasonal Workers*], BUNDESAGENTUR FÜR ARBEIT, July 1, 2012, http://www.arbeitsagentur.de/zentraler-Content/Veroeffentlichungen/Merkblatt-Sammlung/MB-ZAV-Vermittlung-kroatische-Saisonarbeitnehmer.pdf.

[16] EUROPEAN COMMISSION, *supra* note 7.

[17] *Merkblatt*, *supra* note 15.

[18] Kadelbach, *supra* note 9.

[19] European Court of Justice, Case C-546/07, Jan. 21, 2010, http://curia.europa.eu/juris/recherche.jsf?language=en (enter case no. in search field).

[20] TFEU, *supra* note 8, art. 21.

[21] *Merkblatt*, *supra* note 15.

[22] Admittance as an au pair to provide child care help is desirable for some citizens of non-EU countries. A permit for this type of work is limited to duration of one year. *See* Verordnung über die Zulassung von neu-einreisenden Ausländern zur Ausübung einer Beschäftigung [BeschV] [Regulation on the Admittance of Aliens for Employment Purposes], Nov. 22, 2004, BGBL. I at 2937, as amended, § 20.

B. Eligibility for Admission as a Temporary Worker

Temporary workers could be admitted either as part of a work crew that a foreign contractor deployed to Germany for a specific project,[23] or as a worker recruited for Germany by his homeland for seasonal work.[24] In addition, temporary admission was also available for household help,[25] and for workers employed in movable trade fairs and exhibitions.[26] Most of these programs applied to unskilled labor,[27] yet some of the programs for workers deployed under contract also applied to skilled workers (see below, C. Recruitment and Sponsorship).

Temporary workers required a residence permit to enter Germany which could be issued by the German consulate in the foreign country and was granted only if a work permit had been promised or obtained in compliance with German law or the governing bilateral agreement.[28]

Residence permits for seasonal workers could be granted for a maximum period of six months within a calendar year to those employed in agriculture and forestry, the food service and lodging industries, the processing of produce industries, and lumberyards, provided that their employment contracts called for a work week of at least thirty hours, with an average working time of six hours per day.[29] Residence limits of eight or nine months existed for workers in some other industries, among them trade fairs and movable exhibitions.[30]

C. Recruitment and Sponsorship

Temporary workers were allowed to enter after having been selected by their home country and approved by the German Federal Employment Agency[31] according to the terms specified in the governing bilateral agreement, which usually adhered to the requirements of German domestic law. For workers deployed by a foreign contractor, a change of employer was possible only to a limited extent and then only after notifying the German authorities.[32] Likewise, for seasonal workers a change of employer was generally not foreseen and would in any event have required permission from the Federal Employment Agency which assigned individual workers to

---

[23] BeschV § 39.

[24] BeschV § 18.

[25] BeschV § 21.

[26] BeschV § 19.

[27] Aufenthaltsgesetz [AufenthG] [Residence Act], repromulgated Feb. 25, 2008, BGBL. I at 162, as amended, § 18(2) & (3), current version *at* http://www.gesetze-im-internet.de/aufenthg_2004/index.html.

[28] ArGV § 6.

[29] BeschV § 18.

[30] BeschV § 19.

[31] BeschV § 18.

[32] As provided, for instance, in Vereinbarung über die Entsendung von Arbeitnehmern polnischer Unternehmen zur Ausführung von Werkverträgen [Agreement on the Deployment of Employees of Polish Enterprises for the Execution of Work Contracts] (Poland-Germany Agreement), Apr. 4, 1990, BGBL. II at 602, as last amended by Vereinbarung, Apr. 4, 1993, BGBL. II at 1125.

individual German employers.[33] (Incidentally, the Federal Employment Agency continues to provide placement services for seasonal workers from East European Countries to German employers even though the law no longer requires the involvement of the agency.[34])

An example of such a bilateral agreement on temporary workers is the now obsolete agreement between Germany and Poland of 1990 for work contract deployment.[35] At the time of its conclusion, it limited the number of workers that could be deployed per year to 11,000 (5,000 of these for the construction industry), and provided a mechanism for increasing the number in future years, depending on unemployment rates in Germany. It provided that, for purposes of deployment for a work contract, the Polish contractor had to get the permission from the competent Polish Ministry and assurances from the German Employment Agency that work permits would be granted. A worker could not be deployed for longer than two years, and later deployments were permissible only after a waiting period equal to the time spent in Germany during the previous deployment.

D. Visa Conditions

The time limits of residence permits for temporary workers were strictly enforced and could not be extended under any circumstances. The restriction of seasonal work permits to six months per year[36] led to waiting periods during which the foreign workers had to leave Germany and this prevented them from solidifying their status into a longer residence that might have eventually led to permanence.[37] Although the admission of temporary workers involved caps and limits of various types,[38] and the number of workers were established by market-based methods, these parameters might have led Germany to admit additional temporary workers[39] but under no circumstances could labor market developments have led to the extension of residence permits for temporary workers.

Throughout the duration of their work permits temporary workers were tied to the German employer to whom the Federal Employment Office assigned them. If any reassignment were to become necessary, it could be carried out only through the Federal Employment Office.[40]

---

[33] *Merkblatt*, *supra* note 15.

[34] *Id.*

[35] Poland-Germany Agreement, *supra* note 32.

[36] BeschV § 18.

[37] Waiting periods were also foreseen for domestic employees. They could obtain a residence permit for up to three years; a renewal, however, was only possible after they had stayed away from Germany for the length of time that they previously had been permitted to stay there. BeschV § 21.

[38] *See*, *e.g.*, the terms of the Poland-Germany Agreement, *supra* note 32.

[39] Labor market conditions were mostly used to limit the number of seasonal workers in times of high domestic unemployment. Thus there was concern when the number of admitted seasonal workers had risen from 209,886 workers per year in 1998 to 309,469 in 2003, and 325,000 in 2005, and this led to quotas for 2006 and 2007 calling for the reduction of permits to 90% of the workers admitted in 2005, in order to alleviate domestic unemployment. *See* CHRISTIAN STORR ET AL., KOMMENTAR ZUM ZUWANDERUNGSRECHT 127 (2d ed. 2008).

[40] *Merkblatt*, *supra* note 15.

Altogether, the strict observance of these and other conditions and limits of the temporary residence permit prevented the holders of such permits from becoming permanent.

E. Admission Status of Family Members

The time limits for temporary worker visas and the mandatory waiting periods between employments in Germany effectively prevented the admission of family members of temporary workers. The German Residence Act imposes various restrictive criteria for the immigration of spouses and children of resident aliens.[41] Spouses of aliens may be granted a residence permit only if the alien resides in Germany under a residence permit that is intended to be applicable for at least one year.[42] Dependent children will be admitted only if both parents or the parents with sole custody have a German residence permit and the center of the child's life is being moved to Germany. The duration and renewability of residence permits for children and spouses who join a resident alien are strongly tied to the person and the status of the originally admitted sponsoring alien.[43]

[41] AufenthG §§ 30–34.

[42] AufenthG § 30(1), (3)(e).

[43] AufenthG §§ 31 & 34.

ISRAEL

Ruth Levush
Senior Foreign Law Specialist

SUMMARY Israel permits the employment of foreign nationals and residents in accordance with special guest workers programs. To enter Israel, guest workers use a temporary/visitor visa that is initially limited to three months but can be extended periodically. The employment of a visa holder is restricted to the sector in which the worker may be employed rather than to a specific employer. A worker visa will not be issued, however, unless the employer has a permit that allows the employment of the worker. Employment permits are restricted to certain labor sectors and quotas, as applicable. Children of guest workers are generally not allowed to stay in Israel after the expiration of their tourist visas.

I. Introduction

Having been established as a Jewish homeland, immigration into Israel is generally regulated by the Law of Return, 5710-1950,[1] which applies to the immigration of Jews and their families to Israel as *Olim*.[2] Immigration of persons who do not qualify under the Law of Return has been limited to exceptional circumstances in accordance with provisions of the Entry into Israel Law, 5712-1952.[3]

Beginning in the 1990s, however, many foreign migrants have arrived in Israel as temporary workers. Some entered under special visas allocated under guest worker programs designated for certain fields such as construction, agriculture, and eldercare. Others entered illegally and stayed.[4] The migrant population in Israel is diverse and was recently estimated as including approximately 400,000 workers from Thailand, the Philippines, the former Soviet Union, China, and other countries; 60,000 African asylum seekers; and 100,000 Palestinians seeking family reunification.[5] The recruitment, authorization, and conditions of employment of foreign temporary workers are regulated by the Foreign Workers Law, 5751-1991.[6]

---

[1] Law of Return, 5710-1950, 4 LAWS OF THE STATE OF ISRAEL [LSI] 114 (5710-1949/50), as amended.

[2] *Olim* are immigrants under the Law of Return.

[3] Entry into Israel Law, 5712-1952, 6 LSI 159 (5712-1951/52), as amended.

[4] Bianca Ambrosio & Jonathan Kahan, Op-ed, *Immigration Policy, Now*, YNET (June 26, 2012), http://www.ynetnews.com/articles/0,7340,L-4246428,00.html.

[5] *Id.*

[6] Foreign Workers Law, 5751-1991, SEFER HAHUKIM [SH] [Book of Laws, Official Gazette] No. 1349, p. 112.

II. Eligibility for Admission as a Temporary Worker

A. Visas and Visitor's Residence Permits

The entry into Israel Law, 5712-1952 authorizes the Minister of the Interior to grant a visa and a visitor's residence permit to a "foreign worker," including "a person who is about to be admitted for work as a worker."[7] A "foreign worker" is defined by the Foreign Workers Law as a worker who is neither an Israeli citizen nor a resident.[8] A worker visa will not be issued unless the employer holds a permit allowing him/her to employ the worker.

A request by an employer for a worker visa must be accompanied by a medical certificate based on a medical examination conducted within three months prior to the worker's arrival in Israel in which he or she was found not to be a carrier of any of the following diseases: tuberculosis, hepatitis, gonorrhea, or AIDS. The Law requires that such a medical certificate be issued by a medical institution in the foreign country that is recognized for this purpose by the Minister of Health, and that the medical examination on which it is based be undertaken with the worker's informed consent and the consent of the health authorities in the country where it is conducted.[9]

B. Employment Permits

An employment permit submitted in connection with the issuance of a visa and residence permit must be issued by the officer in charge of employment rights of foreign workers at the Ministry of the Industry, Trade and Labor.[10] The permit may either specify the number of workers that the employer may employ or identify them by names.[11]

The Foreign Workers Law provides that employment permits will be issued in consideration of the needs of the labor market in specific labor sectors and geographical regions.[12] The following occupations have been designated as those for which permits may be granted:[13]

- Nursing care
- Agriculture
- Construction
- Welding and industrial professions

---

[7] Entry into Israel Law § 2(c) (referring to the definition in the Foreign Workers Law §1L) (translation by author, R.L.).

[8] Foreign Workers Law § 1.

[9] *Id*. § 1B.

[10] Entry into Israel Law § 2(c); Foreign Workers Law § 1M(a).

[11] Foreign Workers Law § 1M(a).

[12] *Id.* § 1M(b).

[13] *Guide for Migrant Workers*, ISRAEL GOVERNMENT PORTAL, http://www.gov.il/FirstGov/TopNavEng/EngSituations/ESMigrantWorkersGuide/ESMWGComing/ (last visited Feb. 20, 2013).

- Hotel work
- Ethnic cookery

The Foreign Workers Law further authorizes the Minister, after having consulted with the Minister of Industry, Trade and Labor, to impose conditions on employment permits, such as the type of labor in which the foreign worker can be employed, certain compensation requirements, and registration of days of work and of days of absence by the employer.[14]

An employer's application for an employment permit for a foreign worker must be accompanied by an application fee for both the initial permit as well as for any request for a permit extension. The employer is also responsible for payment of an annual employment fee for each visa and permit. Fee amounts depend on the labor sector in which the foreign worker is employed.[15]

III. Recruitment and Sponsorship

As a general rule, foreigners cannot be employed in Israel through recruitment agencies. Exceptions exist for foreign workers who are employed in the construction trade. According to information posted on Israel's Government Portal, as of May 2005, construction workers are only employed in Israel through Licensed Manpower Companies (LMCs). The LMCs assign workers to work with various building contractors.[16]

Additionally, the employment of some of the foreign workers who are employed in the nursing trade is facilitated by "nursing companies." These companies operate under special permission from the National Insurance Institute to provide nursing services to people who require nursing care. Although these companies pay part of the foreign workers' wages, they are not the foreign workers' employer;[17] the person requiring the care is the employer of foreign nursing care workers. According to information posted on the Ministry of Industry, Trade and Labor, nursing companies are

> [o]nly a "channel" for transferring the "home-care allowance", to which the disabled employer is entitled under the National Insurance Law. The home-care allowance is usually transferred by a payment made directly into the foreign worker's bank account. This is on account of the wage due to him for his total work for his employer—the disabled person entitled to the home-care allowance. The disabled employer will receive a 'wage slip', which is an account of the part of the wage which has been transferred by the company according to the home-care allowance to which the disabled person is entitled as aforesaid.[18]

---

[14] Foreign Workers Law § 1N(1).

[15] *Id.* §1 J.

[16] *Guide for Migrant Workers*, *supra* note 13.

[17] *Foreign Workers' Rights at Work Handbook – Rights Under Labor Laws*, MINISTRY OF INDUSTRY, TRADE AND LABOR, http://www.moital.gov.il/NR/exeres/C95B7D30-1105-47C7-85D8-17B26C284C31.htm (last visited Feb. 21, 2013).

[18] *Id*.

Foreign nursing caregivers and their employers are obliged to contact one of the private licensed offices that are authorized by the Ministry of Industry, Trade and Labor,[19] and sign a request form registering the worker as a caregiving employee in Israel.[20]

According to information posted on Israel's Government Portal, where appropriate, workers may be required to pay a recruitment fee if recruited in their native countries. The fee paid to recruitment agencies both abroad and in Israel must not exceed the total sum of NIS 3,050 (about US$831), in addition to travel expenses. Workers who were asked to pay undue or extra recruitment fees are encouraged to file a complaint with the Head of Section in Charge of Foreign Workers' Rights at Work (HSCFWRW).[21] According to the Foreign Workers Law, the HSCFWRW is appointed by the Minister of Industry, Trade and Labor from the ministry's employees and is responsible for enforcement and for increased awareness of rights granted to foreign workers under the labor law.[22]

IV. Visa Conditions

A. Specification of Labor Sector Rather than Specific Employer

A worker visa may be obtained either at the foreign worker home country or in Israel with a tourist visa. A worker visa is valid only for the specific trade for which it was issued. Employment in another trade is prohibited.[23]

B. Duration

According to the Entry into Israel Law, temporary residence for a foreign worker is initially limited to a period of three months, which can be extended by the Minister of Interior for up to five years as long as the first extension period does not exceed two years, followed by single annual extensions.[24] An extension of employment beyond the five-year limit may be authorized by the Minister for the purpose of continuing the employment of a foreign worker who provides nursing care for a patient, subject to conditions specified by law.[25]
The Minister of Interior is generally authorized to change a visa and a time-limited residence permit to a permit for permanent residence.[26] However, no regulations were identified that establish a program to provide a path to permanent status for foreign workers.

---

[19] *Foreign Caregivers–Information Sheet Regarding New Employment System*, MINISTRY OF INDUSTRY, TRADE AND LABOR (Feb. 2, 2009), http://www.tamas.gov.il/NR/exeres/457B4A53-40EE-47A0-B5A9-3EC0BC386D78.htm.

[20] *Id.*

[21] *Guide for Migrant Workers*, *supra* note 13. For further information about the HSCFWRW, see *A Note from the Head of the Section*, MINISTRY OF INDUSTRY, TRADE AND LABOR, http://www.moital.gov.il/NR/exeres/6E253665-892F-4453-9198-ED8BC963D7E8,frameless.htm (last visited Feb. 21, 2013).

[22] Foreign Workers Law ch. D3.

[23] *Guide for Migrant Workers*, *supra* note 13.

[24] Entry into Israel Law §§ 2(3) & 3(3).

[25] *Id.* § 3A.

[26] *Id.* § 4.

C. Change of Employers

The Foreign Workers Law authorizes the Minister of the Interior, after consultation with the Minister of Industry, Trade and Labor, and with the approval of the Knesset (Parliament) Committee for Labor, Welfare and Health, to issue regulations regarding a change of employers by foreign workers. Among other issues, the regulations may apply to the proportional contribution paid by employers on account of employment fees paid under the Law.[27]

According to the Foreign Workers (Transfer of a Foreign Worker among Employers that are Manpower Companies in the Construction Sector) Regulations 5776-2006,[28] a foreign worker employed in the construction sector may transfer from one manpower company to another as long as a request for registration with the new employer was submitted within twenty-nine days from the date on which the employment with the former employer has ceased and as long as the new employer registered the foreign worker with the appropriate unit at the Ministry of Industry, Trade and Labor.[29] Registration may be done at three-month intervals on the last day of each quarter unless the HSCFWRW has found that the foreign worker was fired by the previous employer or when special circumstances that justify such transfer before the completion of the quarter exist.[30]

In a 2006 leading decision, Israel's Supreme Court held that, as a rule, tying a foreign worker's residence permit to a specific employer violates the requirement of proportionality under the Basic Law: Human Dignity and Liberty and was therefore void. The Court ordered the government to establish rules that would comply with the Basic Law's requirements.[31] By December 2009, when an additional decision was rendered by the Supreme Court regarding implementation of its 2006 decision, new procedures had been established. The procedures apply to foreign workers in the caregiving, agriculture, and industry sectors. Among other things, the new procedures removed any limitation on the number of transfers a worker could make among employers and further diminished the ability of an employer to block the transfer of a worker to another employer.[32]

D. Caps/Quotas

Unlike in the agriculture and construction sectors where the number of foreign workers that can obtain worker visas is limited by a clear quota, there are no quotas limiting the number of visas

---

[27] Foreign Workers Law § 6A.

[28] Foreign Workers (Transfer of a Foreign Worker among Employers that are Manpower Companies in the Construction Sector) Regulations 5776-2006, KOVETZ HATAKANOT (Subsidiary Legislation) 5776 No. 6477, p. 735.

[29] *Id.* § 2.

[30] *Id.* § 3.

[31] H.C. 4542/02 Kav LaOved v. Israel's Government ¶ 62 (decision rendered Mar. 30, 2006), STATE OF ISRAEL: THE COURT AUTHORITY, http://elyon1.court.gov.il/files/02/420/045/O28/02045420.o28.pdf.

[32] *Id*. (decision rendered Mar. 12, 2009), http://elyon1.court.gov.il/files/02/420/045/o51/02045420.o51.pdf.

that can be issued for foreign workers in the nursing care sector. Where applicable, quotas are determined by the government.[33]

E. Linkage Between Sectors of Employment and Economic Conditions

As explained above, foreign worker visas are issued based on employment permits that are provided to employers in accordance with criteria that take into account "characteristics of the labor market in the different labor sectors and geographic locations."[34]

V. Admission Status of Family Members

Children of foreign workers are generally not allowed to stay in Israel after the expiration of their tourist visas. A temporary resolution adopted by Prime Minister Binyamin Netanyahu's government on August 1, 2010,[35] granted permanent resident status to children of migrant workers who at that time, among other conditions,[36]

- had lived in Israel for at least five consecutive years,
- spoke Hebrew, and
- arrived in Israel before they were thirteen years old.

[33] GILAD NATAN, NON-ISRAELIS IN ISRAEL (FOREIGNERS, REFUGEES, INFILTRATORS AND ASYLUM SEEKERS), STATUS REPORT, 2010–2011, at 2, (Knesset Information and Research Center, Dec. 13, 2011), http://www.knesset.gov.il/mmm/data/pdf/m02986.pdf (in Hebrew).

[34] Foreign Workers Law § M.

[35] *Temporary Arrangement for the Grant of Status to Children Who Stay Illegally, Their Parents and Siblings Who Stay in Israel*, PRIME MINISTER'S OFFICE (Aug. 1, 2010), http://www.pm.gov.il/PMO/Archive/Decisions/2010/08/des2183.htm (in Hebrew).

[36] *Frequently Asked Questions*, *Guide for Migrant Workers,* ISRAEL GOVERNMENT PORTAL, http://www.gov.il/FirstGov/TopNavEng/EngSituations/ESMigrantWorkersGuide/ESMWGFaq/ (last visited Feb. 21, 2013).

JAPAN

Sayuri Umeda
Senior Foreign Law Specialist

SUMMARY Japan does not accept low-skilled foreign workers in principle. However, a trainee system has been employed by companies to use low-skilled foreign workers. The trainee system was reformed recently so that the system would operate in accordance with its original purpose. In addition, descendants of Japanese emigrants to South American countries, such as Brazil and Peru, have been accepted as long-term residents without employment restrictions.

I. Introduction

Foreigners wishing to enter Japan are, in principle, required to have a valid passport issued by the government of their own country along with a visa issued by the Japanese embassy or consulate.[1] At an airport or seaport, immigration officers check whether or not the foreign national wishing to enter Japan meets the requirements for entering the country.[2] If the requirements are met, the immigration officer grants the foreigner landing permission, which is stamped on his or her passport.[3] The landing permission shows the status of residence of the foreigner.

Foreign nationals who have received landing permission are required to engage in activities pursuant to their status of residence.[4] There are twenty-seven statuses of residence.[5] Among them, sixteen are for employment of foreigners. Some others, such as trainee and permanent resident statuses of residence, also allow for employment.

II. Low-skilled Workers

In principle, Japan does not accept low-skilled temporary workers. However, some statuses of residence are, in fact, used for low-skilled workers.

---

[1] *Visa System in Japan*, MINISTRY OF FOREIGN AFFAIRS OF JAPAN, http://www.mofa.go.jp/j_info/visit/visa/system/index.html (last visited Feb. 20, 2013).

[2] Shutsunyūgoku kanri oyobi nan'min nintei hō [Immigration Control and Refugee Recognition Law] (Immigration Control Law), Order no. 319 of 1951, *last amended by* Law No. 79 of 2009, art. 7.

[3] *Id*. art. 9.

[4] *Id*. art. 2-2.

[5] *Id*. art. 2-2 and Annexed Tables 1 & 2. English translation of statuses is available on the website for foreign students managed by the Ministry of Foreign Affairs, *at* http://www.studyjapan.go.jp/en/toj/toj04e_01.html (last visited Feb. 20, 2013).

A. Technical Intern Trainees

The technical intern trainee status of residence is the current status used for temporary low-skilled foreign workers. Previously the Immigration Control Law had established "trainee" and "intern" statuses, whose purpose was to allow for the transfer of technical skills to the trainees' countries of origin. It was not the intention of the law to accept low-skilled workers.[6] However, because the trainee status was used by some enterprises to acquire cheap labor and some foreign workers were exploited, the Immigration Control Law was amended in 2010 to reform the trainee system,[7] newly creating the "technical intern trainee" status. Some of the requirements for the technical intern trainee status are as follows:

- Skills that the trainee is going to acquire cannot be low-level skills involved in routine, repetitive work.
- The trainee must be eighteen years of age or over and be scheduled to be employed in work that makes use of the newly acquired skills after he or she returns to his or her home country.
- The trainee must plan to acquire skills that are difficult to acquire at his or her location in the home country.[8]

At first, trainees receive lectures and technical training for up to one year. Then, they can engage in on-the-job training for up to two years,[9] after which they must return to their country, because the purpose of the program is to transfer technical skills to the country from which the trainees come. There is no path to permanent residency. Qualified nonprofit organizations, which include small business associations and chambers of commerce and industry, can accept technical intern trainees and provide technical intern training for their member companies. Individual Japanese companies may accept and provide technical intern training for employees of their overseas branches, joint venture companies, and business partners.[10] When trainees are accepted through qualified organizations, these organizations verify and ensure that the technical intern training at each member company is performed appropriately.[11]

---

[6] *Aratana kenshū ginō jisshu seido ni kakaru Q&A* [*Q&A Regarding New Trainee and Technical Intern Training Systems*], MINISTRY OF JUSTICE (MOJ), Q 1-2, http://www.moj.go.jp/nyuukokukanri/kouhou/nyuukokukanri07_00011.html (last visited Feb. 27, 2013).

[7] Ginō jisshūsei no nyūkoku zairyū kanri ni kansuru shishin [Guidelines on the Acceptance and Management of Technical Interns' Stays] (as amended in Nov. 2012), Immigration Bureau, MOJ, http://www.moj.go.jp/content/000102863.pdf.

[8] *Status of Residence of "Trainee"*, JAPAN INTERNATIONAL TRAINING COOPERATION ORGANIZATION (JITCO), http://www.jitco.or.jp/english/overview/comparison.html (last visited Feb. 27, 2013).

[9] Immigration Control Law, Order no. 319 of 1951, *last amended by* Law No. 79 of 2009, art. 21. Immigration Control and Refugee Recognition Law Enforcement Ordinance, MOJ Ordinance No. 55 of 1981, *last amended by* MOJ Ordinance No. 40 of 2012, art. 3 and Annexed Table 2.

[10] *Purpose of the "Technical Intern Training Program"*, JITCO, http://www.jitco.or.jp/english/overview/itp/index.html (last visited Feb. 26, 2013).

[11] *Structure of the Technical Intern Training Program*, JITCO, http://www.jitco.or.jp/english/overview/tip/index.html (last visited Feb. 26, 2013).

The Japan International Training Cooperation Organization (JITCO), which is a public-interest foundation and authorized by the Cabinet office, supports technical intern training programs.[12] JITCO also cooperates with governmental contacts for the countries sending trainees in order to run the program properly. JITCO and the sending countries discuss matters relating to the program and sign the Record of Discussions. The sending countries check recruitment agencies in their countries and accredit them if they satisfy their requirements.[13] The sending countries communicate the identities of accredited agencies, and JITCO publicizes them to Japanese organizations and companies. It is recommended that trainees be accepted only through accredited organizations, but this has not been mandated by law.[14]

B. Long-term Residents

A number of descendants of Japanese emigrants went to Japan after 1987 when Japanese industry needed more workers. Consequently, in 1990, the Immigration Control Law was amended and enabled foreigners who are second- and third-generation descendents of Japanese emigrants to go to Japan as long-term residents.[15] Long-term residents can stay and work without restriction in Japan under the status of residence for long-term residents.[16] Many of them are from South American countries, such as Brazil and Peru.[17] The term of this status of residence is for up to five years.[18] When they enter Japan or renew their status of residence, a criminal record issued from police authorities in the country they have come from is required.[19]

Japanese descendants do not need an employer as a sponsor when they apply for a visa if they have other sponsors, such as relatives.[20] There are four routes for Japanese descendents from

---

[12] *About JITCO*, JITCO, http://www.jitco.or.jp/english/about/index.html (last visited Feb. 26, 2013).

[13] *Okuridashi koku seifu madoguchi to JITCO no teiki kyōgi* [*Periodic Meetings Between Governmental Points of Contact of Sending Countries and JITCO*], JITCO, http://www.jitco.or.jp/send/index.html (in Japanese; last visited Feb. 27, 2013).

[14] *Okuridashi nintei kikan ni tsuite* [*Regarding Accredited Agencies*], JITCO (Feb. 1, 2013), http://www.jitco.or.jp/send/accredited_sending_organizations.html (in Japanese).

[15] Conference on Long-term Residents Who Are Descendants of Japanese Emigrants, Nikkei teijū gaikokujin sesaku ni kansuru kihon shishin [Guidelines Concerning Policies on Long-term Residents Who Are Descendants of Japanese Emigrants], Aug, 31, 2010, http://www8.cao.go.jp/teiju/guideline/pdf/fulltext.pdf.

[16] Shutsunyūgoku kanri oyobi nan'min nintei hō dai 7 jō dai 1 kou dai 2 gō no kitei ni motoduki dōhō beppyō dai ni no teijūsha no kō no karan ni kakageru chii o sadameru ken [Regarding Status of Long-term Residents Described in Annexed Table 2 of Immigration Control and Refugee Recognition Law Under Article 7, Paragraph 1, Item 2 of the Law], MOJ Notice No. 132 of 1990, *last amended by* MOJ Notification No. 37 of 2010.

[17] Conference on Long-term Residents Who Are Descendants of Japanese Emigrants, *supra* note 15.

[18] Immigration Control and Refugee Recognition Law Enforcement Ordinance, MOJ Ordinance No. 55 of 1981, *last amended by* MOJ Ordinance No. 40 of 2012, art. 3 and Annexed Table 2.

[19] *Zairyū shikaku "teijūsha" de nyūgoku/ zairyū suru nikkeijin no kata no nyūkan tetuduki ni tsuite* [*Concerning the Immigration Procedure for Japanese Descendants Who Enter or Stay in Japan Under the Status of Residence for a "Long-term Resident"*], MOJ, http://www.immi-moj.go.jp/keiziban/happyou/nikkei.html (last visited Feb. 19, 2013).

[20] *Nikkei biza no pointo* [*Points About Japanese Descendant Visas*], OFFICE AOYAGI, http://www.officeaoyagi.sakura.ne.jp/nikkei.html (last visited Feb. 27, 2013).

Brazil to find an employer: 1) the referral of friends or acquaintances; 2) Brazilian brokers specializing in Japanese-Brazilian jobs in Japan; 3) Brazilian branches of Japanese recruitment companies; 4) Japanese companies posting jobs through ordinary job postings in Brazil.[21]

There is a path to permanent residency for Japanese descendents in accordance with the general requirements for acquiring permanent resident status. In addition, family members can accompany Japanese descendants when they come to Japan.

C. Foreign Caregivers Under the Economic Partnership Agreement

Foreign nurses and caregivers from countries that concluded agreements with Japan under Economic Partnership Agreements (EPAs) are allowed to stay in Japan for three or four years. Currently, the Philippines and Indonesia have such agreements with Japan. Vietnam concluded the EPA but is still negotiating the conditions for acceptance of nurses.[22] Foreign nurses and caregivers receive training and study for their exams while working at Japanese hospitals and homes for the elderly. If they fail to pass their exams within the designated period, they must return home. Employment is allowed under the status of "designated activities."[23]

Although it is often stated that it is the shortage of nurses and caregivers in Japan's aging society that caused the Japanese government to accept foreign nurses and caregivers,[24] the government denies this, saying that the system was created based on the requests from foreign governments and has the purpose of forging stronger economic ties. [25]

---

[21] Nobuhisa Kameda, *Gaikokujin rōdōsha mondai no shosō* [*Various Issues Facing Foreign Workers*], REFERENCE, at 24 (Apr. 2008), http://www.ndl.go.jp/jp/data/publication/refer/200804_687/068702.pdf.

[22] *Regarding Acceptance of Foreign Nurse and Caregiver Candidates from Indonesia, the Philippines, and Vietnam* (in Japanese), MINISTRY OF HEALTH, LABOUR AND WELFARE (MHLW), http://www.mhlw.go.jp/bunya/koyou/other22/ (last visited Feb. 27, 2013).

[23] *Please Confirm Whether Foreigners Are Allowed to Work When You Hire Them* (in Japanese), MHLW, http://www2.mhlw.go.jp/topics/seido/anteikyoku/gairou/980908gai01.htm (last visited Feb. 27, 2013).

[24] Ida Torres, *Japan Extends Training Period for Filipino, Indonesian Nurses*, JAPAN DAILY PRESS (Feb. 26, 2013), http://japandailypress.com/japan-extends-training-period-for-filipino-indonesian-nurses-2624095.

[25] *Regarding Acceptance of Foreign Nurse and Caregiver Candidates from Indonesia, the Philippines, and Vietnam*, MHLW, *supra* note 22 (in Japanese).

MEXICO

Gustavo Guerra
Senior Foreign Law Specialist

I. Introduction

Mexico's Law of Migration provides for a number of immigration statuses that include permission to work in Mexico temporarily.[1] None of these statuses appear to be specifically limited to low-skilled workers.[2] However, there is a status called Visitor Border Worker that is currently limited to Guatemalan and Belizean nationals who are allowed to work for up to a year in certain Mexican states, provided that applicable requirements are met.[3] According to the Mexican government, in practice the Border Worker status has been mostly applied for by Guatemalans who are temporarily employed in Mexico in activities such as agriculture, construction, and services.[4]

II. Eligibility for Admission as a Temporary Visitor Border Worker

Mexico's Law of Migration provides that the Visitor Border Worker status may be granted to a foreigner from a country that shares a border with Mexico in order to work for up to a year in the Mexican states to be determined by Mexico's Department of Governance.[5] More specifically, a regulation of this Law provides that the Visitor Border Worker status may be granted to Guatemalan and Belizean individuals who are sixteen years of age or older and have a job offer for work activities located in the Mexican States of Campeche, Chiapas, Quintana Roo, and Tabasco.[6]

III. Recruitment and Sponsorship

As stated above, a regulation of Mexico's Law of Migration provides that applicants for the Visitor Border Worker status must have a job offer for work activities located in certain Mexican states.[7]

---

[1] Ley de Migración [Law of Migration] art. 52, DIARIO OFICIAL DE LA FEDERACIÓN [D.O.], May 25, 2011, available on the website of Mexico's House of Representatives, http://www.diputados.gob.mx/LeyesBiblio/pdf/LMigra.pdf.

[2] *Id*.

[3] *Id*. art. 52 (IV). *See also* Lineamientos para trámites y procedimientos migratorios [Guidelines for Immigration Procedures] arts. 75 & 76, D.O., Nov. 8, 2012, available on the website of Mexico's National Institute of Migration, http://www.inm.gob.mx/static/marco_juridico/pdf/acuerdos/2012/Lineamientos_tramites_procedimientos_migratorios.pdf.

[4] NATIONAL INSTITUTE OF MIGRATION, ENCUESTA SOBRE MIGRACIÓN EN LA FRONTERA SUR DE MÉXICO, 2008 [SURVEY ON MIGRATION IN MEXICO'S SOUTHERN BORDER, 2008], pp. 28, 31–33 (2011), http://www.inm.gob.mx/static/Centro_de_Estudios/Publicaciones/descargas/EMIF_SUR_2008.pdf.

[5] Ley de Migración art. 52 (IV).

[6] Lineamientos para trámites y procedimientos migratorios arts. 75, 76.

[7] *Id*.

IV. Visa Conditions

Mexico's Law of Migration provides that Visitor Border Workers are allowed to work in the activity for which they have an employment offer.[8] These workers are allowed to work in Mexico for up to a year.[9] If these workers want to visit Mexican states other than Campeche, Chiapas, Quintana Roo, and Tabasco, they must obtain a permit to travel outside of these areas.[10] This permit does not grant the right to work outside of the referred Mexican states.[11]

The Regulation of the Law of Migration generally provides that immigration statuses may be renewed and changed provided that applicable requirements are met.[12] This Regulation also provides that quotas may be established by the Department of Governance.[13] More specifically, the Visitor Border Workers status may be subject to quotas to be determined by the Departments of Governance and Labor.[14]

V. Admission Status of Family Members

Visitor Border Workers may request the admission of their spouses or partners and minor children.[15] Children who have reached the age of majority but are incapacitated are also eligible for admission.[16]

[8] Ley de Migración art. 52 (IV).

[9] *Id.* *See also* Reglamento de la Ley de Migración [Law of Migration Regulation] art. 155, D.O., Sept. 28, 2012, available on the website of Mexico's House of Representatives, http://www.diputados.gob.mx/LeyesBiblio/regley/Reg_LMigra.pdf.

[10] *Id. See also* Lineamientos para trámites y procedimientos migratorios arts. 75, 76.

[11] Reglamento de la Ley de Migración art. 155.

[12] *Id*. arts. 141-III, 152, 159.

[13] *Id*. art. 119.

[14] Lineamientos para trámites y procedimientos migratorios art. 76.

[15] Reglamento de la Ley de Migración art. 134.

[16] *Id*.

NORWAY

Wendy Zeldin
Senior Legal Research Analyst

SUMMARY The key legal instruments governing immigration in Norway are the Immigration Act and the Immigration Regulations. Foreign skilled workers not subject to a visa requirement may stay in the country without a work permit for up to six months in order to seek employment; they may also enter the country under the sponsorship of a Norwegian employer. Unskilled or seasonal workers may be granted a work permit for up to six months in a twelve-month period for two years at a time, provided they are at least eighteen years of age and have a concrete offer of employment (most typically in the agricultural or forestry sector). The offer of employment must provide a job description, the weekly number of work hours, the hourly wage, and the duration of employment. To be granted a new seasonal worker permit after six months, the worker must have remained outside Norway for six months. An unskilled worker position cannot be filled by domestic labor or labor from the EEA or EFTA area. The permit applies to specific work for a specific employer and does not form the basis for a permanent residence permit[*].

I. Introduction

Norway's new Immigration Act[1] and Immigration Regulations[2] entered into force in January 2010. Under the Immigration Act, in general foreign nationals must have a visa to enter the country.[3] However, nationals of Schengen Agreement[4] countries can travel freely into Norway without applying for a visa; this also applies to citizens of other countries who have a residence permit in one of the Schengen Member States and a valid travel document. [5] Exemption from

[*] This report was prepared chiefly on the basis of materials available in English. The Law Library does not at present have research staff versed in Norwegian.

[1] LOV OM UTLENDINGERS ADGANG TIL RIKET OG DERES OPPHOLD HER (UTLENDINGSLOVEN) [ACT ON THE ENTRY OF FOREIGN NATIONALS INTO THE KINGDOM OF NORWAY AND THEIR STAY IN THE REALM (IMMIGRATION ACT)] (May 15, 2008, as last amended June 22, 2012), LOVDATA, http://www.lovdata.no/all/nl-20080515-035.html. For an English translation, *see* Act of 15 May 2008 on the Entry of Foreign Nationals into the Kingdom of Norway and Their Stay in the Realm (Immigration Act), GOVERNMENT.NO (Nov. 2010), http://www.regjeringen.no/upload/JD/Vedlegg/ Forskrifter/Immigration_Act.pdf.

[2] FOR 2009-10-15 nr 1286: Forskrift om Utlendingers Adgang til Riket og Deres Opphold her (Utlendingsforskriften) [Regulations on Entry of Foreign Nationals to the Kingdom and Their Stay (Immigration Regulations), Regulation No. 1286, Oct. 15, 2009] (as last amended Dec. 20, 2012, effective Feb. 1, 2013, & Jan. 4, 2013, effective Jan. 15, 2013), LOVDATA, http://www.lovdata.no/for/sf/jd/xd-20091015-1286.html. For an English translation, *see* Regulations of 15 October 2009 on the Entry of Foreign Nationals into the Kingdom of Norway and Their Stay in the Realm (Immigration Regulations), GOVERNMENT.NO (Nov. 2010), http://www.regjeringen.no/upload/JD/Vedlegg/Forskrifter/Immigration_Regulation.pdf.

[3] IMMIGRATION ACT § 9 ¶ 1.

[4] The Shengen area comprises twenty-six European countries. *Schengen Fact Sheet*, Travel.State.Gov, http://travel.state.gov/travel/cis_pa_tw/cis/cis_4361.html (last visited Feb. 21, 2013).

[5] IMMIGRATION ACT § 9 ¶ 2; *Do You Need a Visa in Order to Visit Norway*?, UDI, http://www.udi.no/Norwegian-Directorate-of-Immigration/Central-topics/Visa/Who-needs-a-visa-/#the.

the visa requirement also applies to nationals of countries that have a visa exemption agreement with Norway; those foreign nationals can stay in Norway for up to ninety days.[6] For foreign nationals who are to stay in Norway in connection with the implementation of an intergovernmental cooperation agreement by which Norway is bound, the provisions on visas, residence permits, and other matters are applicable, subject to the exemptions pursuant to the agreement.[7] Persons with resident permits or permanent residence permits (settlement permits) in Norway are also exempt from the visa requirement. The permit must be stamped in the person's travel document.[8]

All permits for work under the Immigration Act and the Immigration Regulations are now called residence permits; there are no longer residence permits and work permits.[9] Nationals of the European Economic Area (EEA) (comprising the 27 European Union Member States and Iceland, Liechtenstein, and Norway) are not required to apply for residence permits.[10] Persons granted a residence permit in Norway automatically obtain an entry permit with the right to stay for 30 days; it is not necessary to apply for a visa as well.[11]

The Norwegian Ministry of Justice and Emergency Planning is responsible for asylum and immigration policy. It also has the authority to decide how the Directorate of Immigration (UDI) is to interpret immigration law. The UDI, which is organized under the Ministry, is the central body responsible for coordinating efforts in the field of immigration. The UDI processes applications for asylum and family immigration, permits to work and study, visas, permanent residence permits, citizenship, and travel documents. It also makes decisions on expulsion from and rejection of entry into Norway. Parts of the asylum and immigration field are the responsibility of other ministries: the Ministry of Children, Equality and Social Inclusion is responsible for the Act on Norwegian Nationality, while the Ministry of Labour is in charge of labor immigration.[12] The Norwegian Labour and Social Services Administration (*Arbeids- og*

[6] *Do You Need a Visa in Order to Visit Norway?*, *supra* note 5.

[7] IMMIGRATION ACT § 5 ¶ 4.

[8] *Id*.

[9] *The Immigration Act and Immigration Regulations*, UDI (last updated Dec. 1, 2010), http://www.udi.no/newact. In principle, a residence permit entitles the holder to work in Norway, but in some cases it will be specified that the permit does not entitle the holder to work, or that certain restrictions apply to the work. A permanent residence permit, which is granted to persons who have had permits for at least three consecutive years and forms the basis for permanent stay, entitles the holder to permanently reside and work in Norway. *Id*.

[10] *EEA Nationals Do Not Need to Apply for Residence Permits*, UDI (Oct. 14, 2009) http://www.udi.no/Norwegian-Directorate-of-Immigration/News/2008/EEA-nationals-do-not-need-to-apply-for-residence-permits-/; *Norway Ends Labour Market Restrictions on Bulgarians and Romanians*, THE SOFIA GLOBE (June 19, 2012), http://sofiaglobe.com/2012/06/19/norway-ends-labour-market-restrictions-on-bulgarians-and-romanians/.

[11] *Different Types of Visas*, http://www.udi.no/Norwegian-Directorate-of-Immigration/Central-topics/Visa/What-type-of-visa-should-I-apply-for/.

[12] *Who Does What in the Immigration Administration?*, UDI, http://www.udi.no/Norwegian-Directorate-of-Immigration/Annual-Report-2011/Organisation-and-priorities/Who-does-what-in-the-Immigration-Administration/. The authority of the UDI to decide on applications for visas is provided under the IMMIGRATION ACT § 13 ¶ 1.

velferdsforvaltningen, or NAV), the country's public welfare agency, may also be involved in the granting of residence permits.[13]

II. Visa and Visa-Free Entry

In general, foreign nationals must hold a Norwegian visa to be able to enter the realm, unless an exemption from this requirement has been granted by regulations.[14] A visa issued by a Schengen country entitles the holder to enter into and stay in Norway during the period of validity of the visa when that right is stated in the visa. The total period of stay in the Schengen territory for a foreign national exempt from the visa requirement, or for one entitled to enter and stay pursuant to a Schengen-country-issued visa, provided they meet certain conditions, may not exceed three months in the course of a six-month period.[15] The total period of stay in the Schengen territory may not exceed ninety days in the course of a 180-day period, both for those who need visas and those exempt from the requirement.[16] Foreign nationals with a residence permit issued by a member country of the Schengen Agreement (a Schengen country) and who have a valid travel document are exempt from the visa requirement.[17]

Foreign nationals from a country that is a contracting party to the EEA Agreement or the European Free Trade Association (EFTA) Convention are exempt from the visa requirement, as are their family members, provided that the family member has a residence card in another EEA country.[18] The exemption additionally applies to, among others, foreign nationals with a valid passport from a state with which Norway has entered into a visa-waiver agreement and foreign nationals who are nationals of a country that is exempt from the visa requirement in accordance with the relevant EU regulations.[19] The permitted period of stay for foreign nationals who require a visa will be apparent from the visa that is granted.[20]
Norway's Immigration Act states that exceptions may be made to the right to obtain a Schengen visa "if the foreign policy interests, fundamental national interests or immigration control considerations argue against the visa being granted, or there are circumstances that would

[13] *About NAV*, NAV (as last modified June 24, 2010), http://www.nav.no/English/The+Norwegian+Labour+and+Welfare+Administration.

[14] IMMIGRATION ACT § 9 ¶ 1.

[15] *Id.* § 9 ¶¶ 3 & 4; Immigration Regulations, § 3-3 ¶ 3. In addition, the application must be in accordance with the criteria for visa issuance pursuant to the Schengen Agreement. IMMIGRATION ACT § 10 ¶ 2.

[16] Immigration Regulations § 3-3 ¶ 1.

[17] IMMIGRATION ACT § 9 ¶ 2; Immigration Regulations § 3-1 ¶ 1(d).

[18] Immigration Regulations § 3-1 ¶ 1(b)–(c). The EFTA comprises Iceland, Liechtenstein, Norway, and Switzerland. *The EFTA States*, EFTA, http://www.efta.int/about-efta/the-efta-states.aspx (last visited Feb. 22, 2013).

[19] Immigration Regulations § 3-1 ¶ 1(e)–(f). If the foreign national has a residence permit in another Nordic country and is a national of a country with which Norway has a visa waiver agreement, the period of stay begins on the date a Norwegian border was crossed. In such cases, only stays in Norway in the last six months are to be included when calculating the period of stay. *Id.* § 3-3 ¶ 2.

[20] *Id.* § 3-3 ¶ 3.

provide grounds to deny access to the territory or residence pursuant to other provisions of law."[21]

A. Residence Permits for Foreign Nationals with an Employer in Norway

Under the Immigration Act, a residence permit may be granted to a foreign national performing work for an employer in Norway when the following conditions are met:

> (a) The applicant is aged 18 or older.
>
> (b) Pay and working conditions are not inferior to those prescribed by the current collective agreement or pay scale for the industry concerned. If no such collective agreement or pay scale exists, pay and working conditions shall not be inferior to what is normal for the place and occupation concerned.
>
> (c) The applicant is subject to a quota fixed by the Ministry or the position cannot be filled by domestic labour or labour from the EEA or EFTA area. Exemptions apply if, under international agreements by which Norway is bound, the foreign national is entitled to a residence permit in order to perform the work. Exemptions also apply to foreign seamen who work on board foreign-registered ships.
>
> (d) There is a specific offer of employment. The employment offer shall as a general rule concern full-time employment for a single employer, but exemptions may be granted after a case-by-case assessment of the nature of the position.[22]

B. Exemption from Permit Requirement for Persons Without an Employer

Certain foreigners who do not have an employer in Norway are exempt from the residence permit requirement to engage in work for a period of up to three months, e.g., business travelers; persons with technical qualifications whose labor is not needed for more than three months to install, disassemble, maintain, etc., machinery or technical equipment; persons providing private services to persons visiting Norway for a period of up to three months; professional athletes; journalists; tourist guides for foreign travel companies; and personnel on foreign trains and other means of transport for international traffic.[23] Exemption from the residence permit requirement is also applicable to, among others, researchers, lecturers, and religious workers for employment relationships of a duration of up to three months;[24] foreign nationals employed in an international company who are to undergo in-house training for a period of up to three months;[25] musicians, performers, or artists for assignments that do not exceed fourteen days in total in a calendar year;[26] seamen working aboard a foreign-registered cruise ship or an EEA-registered

[21] IMMIGRATION ACT § 10 ¶ 3.

[22] *Id.* § 23.

[23] Immigration Regulations § 1-1 ¶ 1.

[24] *Id*. § 1-1 ¶ 2. Religious workers are subject to a requirement that the need for their labor does not extend beyond three months. *Id*.

[25] *Id*. § 1-1 ¶ 3. The UDI may establish guidelines on what is deemed to be an international company and on the right to stay in Norway for the purpose of in-house training on more than one occasion. *Id*.

[26] *Id*. § 1-1 ¶ 4.

foreign ship;[27] and Russian nationals from the Barents region who have been granted a municipal sales permit to sell wares for stays of up to one day per month.[28]

The Ministry of Justice and Emergency Planning may take a decision to make exceptions from the permit requirement for foreign nationals who are to carry out work related to a crisis situation in Norway.[29] Foreign national ship-security and maintenance crew members and Russian nationals from the Barents region granted a sales permit must report to the police in the district where they are staying.[30] Foreign nationals who are exempt from the residence permit requirement by virtue of being either technicians under part II. B. above or performers are required, before entering Norway, to give written notification to the police in the districts concerned; the notification may also be given by the employer or other responsible person.[31]

C. Skilled Workers

Foreign nationals not subject to a visa requirement who have the qualifications of a skilled worker may stay in Norway without a residence permit for a period of six months in order to seek employment as a skilled worker.[32] Under the Immigration Regulations, skilled workers, i.e., employees who have special training that at a minimum corresponds to upper-secondary-school level, a craft certificate, a college or university education, or special qualifications, are entitled to a residence permit. Conditions that must be satisfied are: (a) the expertise is deemed relevant to the position, (b) the specialist authority concerned has given its approval or authorization for occupations/professions subject to statutory or regulatory qualification requirements, and (c) the employee falls within the quota for skilled workers and specialists.[33] The residence permit for such skilled labor is valid for a specific type of work,[34] and "may be granted even if a specific offer of full-time employment is not for continuous employment."[35] The residence permit for skilled workers forms the basis for the granting of a permanent-residence permit.[36] If no quota has been established for the skilled work or if the quota has been filled, a residence permit may be granted to a skilled foreign national worker when the position cannot be filled by domestic labor or labor from the EEA or EFTA area.[37]

---

[27] *Id*. § 1-1 ¶ 5.

[28] *Id*. § 1-1 ¶ 6.

[29] *Id*. § 1-1 ¶ 7.

[30] *Id*. § 1-1 ¶ 8.

[31] *Id*.

[32] *Skilled Jobseekers—Repealed!*, UDI (Jan. 16, 2013), http://www.udi.no/Norwegian-Directorate-of-Immigration/Central-topics/Work-and-residence/Apply-for-a-residence-permit/Skilled-jobseekers/.

[33] Immigration Regulations, § 6-1 ¶ 1. Quotas are covered under section 6-12 of the Regulations.

[34] *Id*. § 6-1 ¶ 6.

[35] *Id*. § 6-1 ¶ 3.

[36] *Id*.

[37] *Id*. § 6-1 ¶ 4.

There are also provisions entitling employees deemed to be specialists to hold residence permits on the basis of the salary offered to them. Among the conditions to qualify as a specialist is that the salary offered to the foreign national is at least NOK500,000 (about US$89,000) per year, not including benefits in kind.[38]

D. Unskilled (Seasonal) Workers

The Regulations have a special section on residence permits for "unskilled Russian employees, etc." Employees in enterprises requiring unskilled labor may be granted a residence permit for a total period of residence of up to two-years[39] (but only for up to six months at a time; *see below*). Such a permit may be granted to Russian nationals from the Barents region for work in enterprises in Nordland, Troms, or Finnmark.[40] The Ministry of Labour has the authority to establish guidelines on the industries and geographical areas for which a permit may be granted under this provision to unskilled employees, including guidelines to the effect that the provision apply to groups other than the Barents Russians.[41] A condition that must be satisfied, however, is that the position cannot be filled by domestic labor or labor from the EEA or EFTA area; the labor market assessment for this condition applies to the entire two-year period of the permit.[42] Employees will be entitled to a new permit within the two-year period if they receive a specific offer of the same work on the same conditions of employment, if advance assurance to that effect is given in the relevant administrative decision.[43] Unskilled employees who have had a permit with a total period of residence of two years may be granted a new permit after one year's absence from Norway.[44] The permit applies to specific work for a specific employer, and it does not form the basis for a permanent-residence permit.[45]

Seasonal work is described as "work that can only be carried out during limited parts of the year due to climate variations, fluctuations in the availability of raw materials or other circumstances. Forestry, agriculture, the fish processing industry, plant nurseries and the restaurant and tourism industries are typical seasonal industries." This type of work does not include "odd jobs such as carpentry, painting and other maintenance and restoration work."[46] Some seasonal workers replace regular employees in connection with holidays; in such cases, a statement to that effect must be clearly set forth in the application for seasonal work.[47]

---

[38] *Id*. § 6-2 ¶ 1.

[39] *Id*. § 6-4 ¶ 1.

[40] *Id*. § 6-4 ¶ 2.

[41] *Id*. § 6-4 ¶ 3.

[42] *Id*. § 6-4 ¶¶ 4 & 5.

[43] *Id*. § 6-4 ¶ 5.

[44] *Id*. § 6-4 ¶ 6.

[45] *Id*. § 6-4 ¶ 7.

[46] *Seasonal Worker*, UDI (last updated June 15, 2012), http://www.udi.no/Norwegian-Directorate-of-Immigration/Central-topics/Work-and-residence/Apply-for-a-residence-permit/Seasonal-worker/.

[47] *Id*.

For a seasonal work permit, there are no formal qualification requirements, but the applicant must be at least eighteen years old and have a concrete offer of employment (these are standard requirements for a residence permit under the Immigration Act). In addition, the employment offer "must contain a job description and state the number of working hours per week, [the] hourly wage and the duration of the offer of employment."[48] In order for seasonal workers who have held a permit for six months to be granted a new permit as a seasonal worker, they must have stayed outside Norway for six months. For those who have been granted several permits as a seasonal worker in Norway with a duration of under six months, the total period of stay in the country cannot exceed six months during a twelve-month period.[49] While the work must in general be continuous full-time employment, "it can be divided between several employment offers from the same or different employers," but if a worker wants to change employers after the permit has been granted, he or she must reapply for a permit.[50] Where there is a collective agreement or pay scale for the given industry, the worker's pay and working conditions must comply with it; if there is none, the pay and working conditions must be no worse than normal for the occupation and place concerned, and the worker must be guaranteed a minimum hourly wage.[51] Seasonal residence permits are not renewable, and holders must apply for an extension before the expiration of their current permit. This may be done by using the same application form as for the first-time application and submitting it to the local police district. Such applications are subject to an application fee.[52]

In conformity with section 6-12 of the Immigration Regulations, the consent of the Norwegian Labour and Welfare Administration (NAV) is required for a residence permit to be granted to a seasonal worker. The NAV assessment is obtained at the county level, and it considers, among other matters, whether the position can be filled by domestic labor or EEA labor.[53] However, NAV consent is no longer required for applications for permits for seasonal work in the agriculture and forestry industries because the agency has established a yearly quota of 2,500 permits for such seasonal work.[54] For other types of seasonal work, NAV consent to a permit is required, and the consent must be included with an application at the time of submission to reduce processing time.[55] There are special simplified rules for persons who apply for short-term seasonal work in agriculture or gardening, but they do not apply to persons residing abroad who need a visa to enter Norway.[56] Rejection of an application may be appealed.[57]

---

[48] *Id.*

[49] *Id.*

[50] *Id.*

[51] *Id.*

[52] *Id.*

[53] *Id.*

[54] *Id.*

[55] *Id.*

[56] *Id.*

[57] *Id.*

A prospective employer can apply for a permit on the seasonal worker's behalf if the worker authorizes him or her in writing to do so by completing the authorization section of the application form or submitting an authorization form. Employers submit the application to the police in the locality of their registered business address.[58]

III. Recruitment and Sponsorship

According to the UDI, the foreign employee, as a general rule, must have a concrete offer of employment in Norway in order to apply for a residence permit there. A set form, the offer of employment (*Arbeidstilbud*), must be used to make the offer and be signed by both the employer and the employee.[59] Written authorization is needed by the employer to submit the application for a residence permit on behalf of the foreign employee; it is given through the set offer of employment form or through a separate authorization form. Under an early employment scheme, which can be used in connection with skilled workers, seconded employees, and trainees of international companies, a Norwegian employer can apply for the permit on the employee's behalf without the written authorization, but to be covered by the scheme, the employer must submit a certificate for certain taxes, including value-added tax, as well as a self-declaration of his or her company's compliance with statutory Norwegian health, safety, and environmental requirements.[60]

The application must be submitted to the police district in the locality of the employer's registered business address or to a foreign worker service center. In general, the employee must remain in the home country or in the country where he or she has held a residence permit for the past six months and not enter Norway until the residence permit has been granted, but this does not apply to skilled workers, provided that the person has legal residence in Norway and is not an asylum seeker and that his or her whereabouts is indicated in the application.[61]

The Directorate of Immigration may grant a group permitted employers to employ, for specific work of limited duration, a specific number of employees.[62] The employer must provide a precise description of the nature of the work, the work must occupy at least six persons, and the group must consist of a specific number of persons;[63] the group permit granted to an employer

---

[58] *Id*.

[59] *How to Hire Foreign Workers*, UDI, http://www.udi.no/Norwegian-Directorate-of-Immigration/Central-topics/Work-and-residence/How-to-employ-foreign-workers/How-do-I-employ-foreign-workers/ (last visited Feb. 25, 2013). For the offer of employment form for seasonal workers, *see* Særskilt skjema for arbeidstilbud og søknad om sesongtillatelse—jordbruks- og skogsnæringen, RS 2010-131V2, UDI, http://www.udiregelverk.no/PageFiles/3458/RS%202010-131V2.docx. *See also*, in general, Forms for residence permits for work, UDI, http://www.udi.no/Norwegian-Directorate-of-Immigration/Oversiktsider/Application-forms/Application-forms-for-work-and-residence/.

[60] *How to Hire Foreign Workers*, *supra* note 59.

[61] *Id*. The information on sponsored employment set forth in this paragraph and the immediately preceding one is based principally on sections 10-3 and 10-4 of the Immigration Regulations.

[62] Immigration Regulations § 6-7 ¶ 1.

[63] *Id*. § 6-7 ¶ 2.

will be tied to specific work and apply to a specific number of employees.[64] As a condition for the permit, the employer must seek to take on employees that meet the conditions for a permit for skilled workers, although a permit may be granted even if some of the employees do not have those qualifications, provided the employer substantiates that such employees' participation is a necessary prerequisite for the group's ability to function.[65] Employees covered by a group permit are granted individual residence permits after their arrival for work. An employee's permit is registered as part of the quota for skilled workers and specialists (*see* section 6-12 of the Regulations), even if he or she does not possess those qualifications. The individual permit is tied to specific work for a specific employer and does not form the basis for a permanent residence permit.[66]

IV. Admission Status of Family Members

Family members of Swiss and EEA citizens are exempt from the visa requirement when the family member has a residence card in an EEA-country outside of Norway.[67] The family members of EEA nationals who are not EEA nationals themselves must apply for residence permits pursuant to the current regulations.[68] As was noted above, a residence permit for a seasonal worker does not form the basis for a permanent residence permit, nor may it serve as the basis for family immigration.

V. Quotas

The Norwegian Labour and Welfare Administration must consent to carrying out a labor market assessment, in accordance with guidelines issued by the Norwegian Directorate of Labour and Welfare, as a perquisite for the granting of a permit when such an assessment is required to determine in an individual case whether the position can be filled by domestic or EEA or EFTA labor.[69] The Ministry of Labour, in consultation with the Ministry of Trade and Industry and the Ministry of Finance, establishes an annual quota for skilled workers and specialists, while the Norwegian Directorate of Labour and Welfare establishes the quota for seasonal workers in agriculture and forestry.[70] As was noted above, NAV has established a yearly quota of 2,500 permits for the agricultural and forestry industries. The Directorate of Immigration may establish further guidelines on the quota arrangements in consultation with the Directorate of Labour and Welfare.[71]

---

[64] *Id*. § 6-7 ¶ 4.

[65] *Id*. § 6-7 ¶ 3.

[66] *Id*. § 6-7 ¶ 5.

[67] *Do You Need a Visa in Order to Visit Norway?*, *supra* note 5.

[68] *EEA Nationals Do Not Need to Apply for Residence Permits*, *supra* note 10.

[69] *Id*. § 6-12 ¶ 1.

[70] *Id*. § 6-12 ¶ 2.

[71] *Id*. § 6-12 ¶ 3.

The Immigration Act also stipulates that "[w]hen foreign policy considerations or fundamental national interests make it necessary, entry may be refused, and applications for a temporary or permanent residence permit may be rejected, or limitations or conditions may be set. Administrative decisions shall be made by the Directorate of Immigration."[72]

The number of new permits issued to labor migrants to Norway from countries outside the EEA increased to 7,700 in 2011 from 6,500 in 2010. This figure includes all categories of workers—skilled, seasonal, and others. The period January to September 2012 saw a 15 percent increase in the number of new permits issued compared to the corresponding period of 2011. The five main countries of origin of the workers, outside the EEA, were India, the Philippines, the United States, Vietnam, and Russia.[73]

[72] IMMIGRATION ACT § 7 ¶ 1.

[73] INTERNATIONAL MIGRATION 2011–2012: IMO REPORT FOR NORWAY, http://www.regjeringen.no/upload/AD/publikasjoner/rapporter/2013/IMO_report_2011_2012_final.pdf (last visited Feb. 22, 2013).

RUSSIAN FEDERATION

Peter Roudik
Director of Legal Research

SUMMARY The Russian guest worker program is based on an employers' authorization to hire migrant workers according to annual quotas determined by the federal government. Concluded labor agreements are the basis for receiving entry visas and residence permits. Guest workers are prohibited from changing their employer and place of residence. They are also subject to mandatory residence registration procedures with local police. In case of violations, guest workers are deported and their requests for Russian visas can be denied in the future. Employers are responsible for monitoring foreign employees and their departure from the country upon the expiration of their labor agreement. Guest workers can change their legal status under limited circumstances only, and their path to Russian citizenship is complicated. Family members can accompany unskilled migrant workers if a number of legal requirements are met. A simplified labor license procedure is provided for people working as household assistants. Migrant workers do not have direct access to social benefits granted to Russian citizens, and this issue is regulated by bilateral agreements. Special provisions apply to guest workers from selected former Soviet republics as well as those from Vietnam and China.

I. Introduction

According to the World Bank, Russia is the second most frequent migrant destination country in the world following the United States, with approximately 12.3 million immigrants who have moved to the country primarily for economic reasons.[1] The Federal Migration Service of the Russian Federation, a government agency in control of the migration process, reported 9.1 million guest workers employed in Russia in 2012, mostly from the former Soviet states, China, Southeast Asia, sub-Saharan Africa, and Eastern Europe.[2] About one-quarter of officially admitted migrant workers from the countries that have visa arrangements with Russia are unskilled laborers working mostly in the construction and mining industries, and providing janitorial services. About 35% of all migrants are concentrating in the city of Moscow.[3]

The recently approved Concept of the State Migration Policy for the Period Until 2025[4] is aimed at strengthening control over migration and migrants while simplifying procedures for legal labor migration. Presently, unregulated labor migration and the use of workers who are in Russia

[1] WORLD BANK, MIGRATION AND REMITTANCES FACTBOOK 2011, at IX, http://siteresources.worldbank.org/INTLAC/Resources/Factbook2011-Ebook.pdf (last visited Feb. 20, 2013).

[2] Information on foreign labor migration reported by the Federal Migration Service of the Russian Federation, http://www.fms.gov.ru/about/statistics/data/details/53595/ (official website; last visited Feb. 19, 2013).

[3] *Russia Will Admit 1.74 Million Guest Workers, A Quarter of Whom are Unskilled*, NEWSRU.COM (Nov. 10, 2011), http://www.newsru.com/finance/10nov2011/migrants_print.html (in Russian; last visited Feb. 18, 2013).

[4] Approved by the Russian Federation President on July 13, 2012. Text of the document is available in Russian on the website of the Russian Federal Migration Service, http://www.fms.gov.ru/law/868/details/53252/.

illegally is a big problem. According to the Federal Migration Service, between three and five million foreigners are working in Russia illegally,[5] and this creates intense pressure on the government and the Russian population in the areas of social protection, health care, residential living, and employment.[6] Additionally, law enforcement agencies report constantly increasing numbers of crimes committed by foreigners. Guest workers commit 15% of all crimes in Russia and are responsible for every fifth murder, every third theft, and every second rape committed in Moscow.[7] In 2012, the office of the prosecutor general investigated 2,682 cases of migration legislation violations,[8] and each month approximately 2,000 migrant workers who are in Russia illegally are removed from the country.[9]

Presently, the process of hiring foreign workers for the domestic labor market is regulated by Federal Law No. 115 of July 25, 2002, on the Legal Status of Foreign Individuals in the Russian Federation,[10] which was substantially amended by Federal Law No. 86 of May 19, 2010,[11] and a series of federal laws passed on December 30, 2012.[12] Numerous implementing regulations issued by the government and individual executive agencies define procedures for recruiting foreign workers[13] and performing the paper work required to secure their legal status in the country.[14]

II. Procedures for Admission as a Guest Worker

Presently, Russian legislation defines three types of procedures for hiring foreign laborers depending on their country of origin and the type of work they are going to perform, including

- issuance of work permits to those who need visas to enter Russia,
- issuance of work permits to those who do not need visas to enter Russia, and

[5] *Ministry of Health Care and Social Protection Increased Quotas for Labor Migrants*, NEWSRU.COM (Apr. 11, 2012), http://www.newsru.com/finance/11apr2012/migr_print.html (in Russian; last visited Feb. 19, 2013).

[6] E.A. Efimova, *Foreign Workers on Labor Market of the Russian Federation Constituent Components*, PROBLEMY SOVREMENNOI EKONOMIKI No. 1(37) (2011), http://www.m-economy.ru/art.php?nArtId=3502 (in Russian).

[7] *Experts Discussed That Every Fifth Person in Moscow is a Migrant Worker*, NEWSRU.COM (Feb. 6, 2013), http://newsru.com/russia/06feb2013/migranty_print.html (in Russian).

[8] *Id.*

[9] Federal Migration Service of the Russian Federation, *supra* note 2.

[10] Federal Law No. 115 of July 25, 2002, on the Legal Status of Foreign Individuals in the Russian Federation (Federal Law on the Legal Status of Foreigners), SOBRANIE ZAKONODATELSTVA ROSSIISKOI FEDERATSII [SZ RF] (official gazette) 2002, No. 30, Item 3032.

[11] Federal Law No. 86 of May 19, 2010, ROSSIISKAIA GAZETA [ROS. GAZ.] (official publication), May 21, 2010, http://www.rg.ru/2010/05/21/grajdane-dok.html.

[12] SZ RF 2012, No. 53(1), Items 7637, 7638, 7640, 7645, 7646.

[13] Government Regulation No. 783 on Defining Needs of Federal Executive Agencies in Attracting and Using Foreign Work Force of December 22, 2006, SZ RF 2003, No. 1(2) Item 247.

[14] Order No. 36 of the Federal Migration Service of the Russian Federation on Issuance of Work Permits to Foreigners of Feb. 26, 2009, http://www.fms.gov.ru/law/866/details/37132/ (official website of the Federal Migration Service; in Russian).

- issuance of labor licenses to those foreigners who want to perform "individual labor activities" (household work) in Russia and do not need entry visas.

The usage of a guest worker's labor is based on two major documents—a permit to hire and use foreign labor and a work authorization for a foreign individual. Both documents are issued by regional branches of the Federal Migration Service.[15]

A. Hiring Individuals Who Need Visas

The permit to hire and use foreign labor is issued after consultations with the regional authority in charge of employment issues. These permits are issued within the quota annually established by the federal government. Each year, the government defines how many work permits can be issued and how they are to be distributed among the constituent components of the Russian Federation, depending on the labor market situation and the opinion of Russian labor unions.[16] Quotas are divided by regions, professions, and fields of employment. During the last several years, approximately one and a half million guest workers were admitted to the country annually. In 2012, the government ordered the issuance of 1.746 million permits to hire guest workers.[17]

In order to obtain a permit, an employer must submit a request. The request must be approved by competent local authorities confirming that there is a necessity to hire foreigners. A labor agreement must be drafted, and the employer must pay a fee in an amount equal to US$150. Employers who have received permits to hire foreign guest workers must inform the Federal Migration Service of the conclusion of a labor contract with the guest worker within one month of obtaining the permit.

Local offices of the Federal Migration Service provide employers with separate work authorizations that are issued for each guest worker. This authorization, in the form of a plastic card, is the main document confirming the foreigner's right to work in Russia. It is also the main document used to substantiate the foreigner's visa application. Foreigners who came to Russia as guest workers, according to the annual quota, cannot change their employer for the duration of the labor contract, and are not eligible for hire by another employer after the labor contract's expiration.[18]

Labor migration within the Commonwealth of Independent States is regulated by a number of multilateral and bilateral agreements aimed at forming a common labor market. The basic legislative policy in this field is determined by the nonbinding regional Convention on Labor Resources Migration, which follows rules and norms accepted by the United Nations and the

[15] Statute on the Federal Migration Service of the Russian Federation, http://www.fms.gov.ru/about/condition/ (official website; in Russian).

[16] Federal Law on the Legal Status of Foreigners art. 6, SZ RF 2002, No. 30, Item 3032.

[17] NEWSRU.COM, *supra* note 5.

[18] Procedures for the Issuance of Work Permits to Those Who Need Visas to Enter the Russian Federation, Guidelines issued by the Federal Migration Service, http://www.fms.gov.ru/documents/withoutvisa/visa.php (official website, in Russian; last visited Feb. 25, 2013).

International Labor Organization.[19] Russia has concluded bilateral treaties with Armenia, Kyrgyzstan, Moldova, Tajikistan, Ukraine, and Uzbekistan. As a rule, these agreements are identical, and provide for application of the domestic legal regime to guest workers. The states have obligated themselves to recognize the education, work experience, seniority, entitlement to compensation for damages, and social security contributions of migrant workers.[20]

In order to obtain a work permit in Russia, a foreigner from a country that has a visa-free agreement with the Russian Federation must submit an application with accompanying documents to the local office of the Federal Migration Service and pay an established fee, which presently equals US$70. An applicant may not be younger than eighteen years of age, and the work permit must be issued within ten business days. If a work permit is issued for more than a three-month period, an individual must find employment within the next thirty days, and pass medical examinations proving that he has no socially dangerous infectious diseases. If an individual does not obtain employment within the thirty-day period, he must leave Russia regardless of the fact that his residency registration has not yet expired.[21]

B. Hiring Citizens of the EEC, Who Do Not Need Visas

Special rules were established in 2011 for the citizens of Belarus and Kazakhstan, countries which together with Russia form the Eurasian Economic Community.[22] According to the three-state Agreement, citizens of Belarus and Kazakhstan have the same employment rights as Russian citizens. This agreement means that the existing permit regime is not applicable to citizens of these countries and they can work in the Russian territory without restrictions. Employers who hire citizens of Belarus or Kazakhstan do not need to obtain authorizations required in the case of hiring foreigners. To start employment, a Belarusian or Kazakhstani citizen must submit to the employer documents proving the worker's legal presence in Russia and other documents that are required by Russian labor law for Russian job seekers. More lenient registration rules and procedures for the renewal of a labor contract are provided for Belarusian and Kazakhstani nationals.[23]

C. Hiring Household Workers, Who Do Not Need Visas

Licenses to perform "individual labor activities" in Russia can be purchased by foreigners, and such workers do not need visas to enter the country. This group includes those who will be hired for work within their prospective employer's household, such as gardeners, housekeepers,

[19] Approved by the CIS Economic Council on Dec. 15, 2000 (not published officially), *available at* the Consultant legal database, http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=INT;n=25224 (by subscription).

[20] Texts of these agreements are available in Russian at the Federal Migration Service website, http://www.fms.gov.ru/law/1131/ (last visited Feb. 20, 2013).

[21] Procedures for the Issuance of Work Permits, *supra* note 18.

[22] Federal Law on Ratification of the Agreement on Legal Status of Migrant Workers and Members of Their Families, SZ RF 2011, No. 29, Item 4277.

[23] Procedures for the Issuance of Work Permits to Those Who Do Not Need Visas to Enter the Russian Federation, Guidelines issued by the Federal Migration Service, http://www.fms.gov.ru/documents/withoutvisa/ (official website, in Russian; last visited Feb. 25, 2013).

babysitters, or handymen, and will not be employed by a Russian judicial entity. Since 2011, such workers have been required to purchase their labor licenses independently.[24] The licenses cost about US$40 per month and are valid for three months, with a possible one-year extension. In order to extend the license for another year after the expiration of the first fifteen-month period, the worker must provide proof of income and payment of taxes when submitting the extension petition to the Federal Migration Service. A fine in an amount equal to US$200 is imposed on those who fail to purchase a license on time. Patrolling local police officers are charged with the duty of checking the legality of foreigners' presence in Russia, their labor licenses, and tax payment receipts, and they have the authority to issue fines on the spot.[25] When this Law was passed, it was estimated that about 3.4 million foreign individuals were working in Russia as household assistants without having a formalized work status.[26]

III. Recruitment and Sponsorship

Presently, Russia does not have comprehensive recruitment programs. As a rule, migrant workers conclude preliminary agreements with Russian employers before requesting entry visas or rely on services provided by Russian government agencies abroad. Where an applicant does not have a preliminary agreement with the employer, he may request assistance from a local employment assistance office in the area of his residence in Russia.[27]

Russian legislation makes an employer responsible for the migrants employed. Employers must register labor contracts with the regional employment assistance office and keep that office informed about the contract's duration and/or its dissolution. The employer is required to register the residency of hired migrants and maintain their registration. Also, the employer must inform tax authorities of the foreigner's employment and submit the required tax withholdings. Since July 2010, all foreign individuals permanently working and residing in Russia have been subject to the annual 13% flat income tax, the same as for Russian citizens.[28] The Law also requires that mandatory health insurance for all foreign workers be paid by their Russian employers.[29]

Employers are responsible for monitoring the activities and behavior of the foreign workers they employ. Employers must inform the responsible authorities of all the guest worker's labor contract violations and of the termination of the labor contract before its anticipated expiration, and report all cases of the guest worker's absence from his place of work or residence to federal security authorities. If the guest worker commits a violation, the labor contract is annulled and he is notified of whether or not he must leave the country within a three-day period. Employers

[24] Federal Law No. 86 of May 19, 2010, ROS. GAZ., May 21, 2010, http://www.rg.ru/2010/05/21/grajdane-dok.html.

[25] *Id.*

[26] Statement of Vladimir Pligin, Chairman of the State Duma's Constitutional Law Committee, *quoted in* Anastasiia Berseneva & Grigori Tumanov, *Migranty Vyedut po Otpechatkam* [*Migrants Will Enter According to Fingerprints*], GAZETA.RU, May 4, 2010, http://www.gazeta.ru/social/2010/05/04/3362449.shtml.

[27] Federal Law on the Legal Status of Foreigners art. 13, SZ RF 2002, No. 30, Item 3032.

[28] Federal Law No. 86 of May 19, 2010, ROS. GAZ., May 21, 2010, http://www.rg.ru/2010/05/21/grajdane-dok.html.

[29] Federal Law on the Legal Status of Foreigners art. 36, SZ RF 2002, No. 30, Item 3032.

who violate legislation regulating the use of foreign labor risk the loss of their permits and are subject to fines.[30] If an employer commits a violation, a guest worker may be allowed to change his employment and execute a new labor contract for the remainder of his employment authorization when this period is no less than three months.[31]

Because under Russian law foreign workers must exit the country immediately after their employment is terminated (if they do not change their legal status), work authorizations are not issued unless the employer deposits enough funds to secure the transportation of each hired guest worker and his family members from Russia to their native country. After the departure of the guest worker from the Russian Federation, this money is refunded to the employer.[32]

IV. Visa Conditions

The majority of migrant workers in Russia do not need visas because they arrive from countries for which no visa is required to enter the Russian Federation.[33] They can stay for ninety days without restriction in Russia, and then for the duration of their work authorization.[34] For those who need visas, Russian entry visas are issued for the term of a work authorization's validity, which initially cannot be longer than one year but may be extended for one additional year after the original visa's expiration. Guest worker visa applications must be submitted to a consular office of the Russian Federation abroad and can be denied on legal grounds.[35] In an attempt to make Russia more attractive to labor migrants, amendments to the Federal Law on the Legal Status of Foreigners, which entered into force on July 1, 2010, allowed guest workers to extend their work permits and visas without leaving the country, which was previously required.[36]

While knowledge of Russian is not a requirement for obtaining an entry visa, since December 1, 2012, labor migrants who come to Russia from abroad cannot obtain work permits without proving their knowledge of the Russian language. Passage of a special test and the receipt of a certificate serve as proof of such knowledge.[37] According to commentaries on the amendments issued by the Federal Migration Service of the Russian Federation, only those who intend to work in the fields of customer relations, communal and housing services, and retail operations are required to pass the test.[38] Other official documents can be used as proof of Russian

[30] *Frequently Asked Questions: Legal Issues*, FEDERAL MIGRATION SERVICE, http://www.fms.gov.ru/treatment/review/list.php?ID=895 (official website; last visited Feb. 25, 2013).

[31] Federal Law on the Legal Status of Foreigners art. 5.

[32] Federal Migration Service, *supra* note 30.

[33] S. Shohzoda, *Russian Federation*, *in* ZASHCHITA SOTSIALNYH I TRUDOVYH PRAV MIGRANTOV NA PROSTRANSTVE SNG [PROTECTION OF SOCIAL AND LABOR RIGHTS OF MIGRANTS IN THE CIS] 147 (Apr. 2012), *at* http://www.mirpal.org/files/files/sbornik_blok_print.pdf (in Russian).

[34] Federal Law on Exit From and Entry Into the Russian Federation, SZ RF 1996, No. 34, Item 4029, § IV.

[35] *Id*.

[36] Federal Law No. 86 of May 19, 2010, ROS. GAZ., May 21, 2010, http://www.rg.ru/2010/05/21/grajdane-dok.html.

[37] Federal Law of Nov. 12, 2012 on Amending Article 13(1) of the Federal Law on Legal Status of Foreigners and Article 27 of the Federal Law on Education, ROS. GAZ. Nov. 14, 2012.

[38] *Migrants' Russian Skills Will be Tested as of December*, NOVAYA GAZETA, Dec. 3, 2012 (in Russian).

language ability if they are recognized in Russia. For example, a diploma issued by a university in the former Soviet Union will be accepted, because at that time all Soviet Republic college-level education was conducted in Russian.[39] The test was developed, the commentaries state, by taking into account the specific, typical abilities of migrants. It is relatively short and simple, consisting of twenty-five vocabulary and grammar questions, and the administration time is up to ninety minutes. Three new test-taking facilities were opened in Moscow to offer the exam. The test can be taken in all the constituent components of the Russian Federation.[40]

With the purpose of fighting illegal migration, penalties for illegally crossing the Russian state border, for being in the country illegally, and for organizing illegal migration were increased in December 2012, making these offenses punishable by imprisonment for up to seven years.[41] The new law allows the government to deny entry to the country for three years to those who are caught in the country illegally or were forcefully removed from Russia previously.[42]

V. Admission Status of Family Members

Russian Law on Entry into and Exit from the Russian Federation states that a worker's visa is extended to family members of the applicant only if the migrant is qualified as a highly-skilled specialist. Family members are not covered by worker's visas issued to temporary guest workers. In these cases, family members need to apply for regular entry visas, which are issued according to Russian legislation. The work authorization of a migrant worker does not automatically extend to other members of the worker's family.[43] An implementing government regulation defines procedures for the issuance of invitations for foreign and stateless individuals to visit Russia and allows migrant workers presently in the country to request admission of their family members as visitors.[44]

[39] *Id*.

[40] *Id.*

[41] Federal Law No. 312 on Amending Article 322 of the Russian Federation Criminal Code, SZ RF 2012, No. 53(1), Item 7637.

[42] *Id.*

[43] Federal Law No. 114 on Entry into and Exit from the Russian Federation, ROS.GAZ., Aug. 22, 1996, http://www.rg.ru/1996/08/22/vjezd-vyezd-dok.html.

[44] Regulation No. 996 of Dec. 24, 2008, ROS.GAZ. Jan. 16, 2008, http://www.rg.ru/2008/01/16/postavshiki-dok.html.

SOUTH KOREA

Sayuri Umeda
Senior Foreign Law Specialist

SUMMARY There are two types of visa for temporary foreign workers: Visit and Employment (H-2) and Non-professional Employment (E-9). H-2 visas are for ethnic Koreans who are nationals of China or former Soviet Union countries. E-9 visas are for nationals of foreign countries with which the Korean government has entered agreements for employing temporary workers.

I. Introduction

A foreigner must have a valid passport and a visa before entering the Republic of Korea (South Korea, hereinafter "Korea").[1] When a foreigner arrives in Korea, he or she undergoes an entry inspection conducted by an immigration control official.[2] Upon granting entry permission to a foreigner, the immigration control official grants the foreigner "status of sojourn" and determines the period of sojourn.[3] Foreigners seeking employment during their stay in Korea must have a visa that allows employment and may only work in workplaces designated by a local or district immigration office.[4]

II. Eligibility for Admission as a Temporary Worker

A. Visit and Employment (H-2)

As Korea's economy developed in the late 20th century, Korea experienced a shortage of low-skilled workers.[5] At first, Korea accepted ethnic Koreans who were Chinese nationals to fill "the labor shortages in various manual sectors including the manufacturing and construction industries."[6] In 2007, the Ministry of Justice introduced the Work Visit (H-2) visa, which granted multiple entries and work permits for ethnic Koreans with foreign citizenship.[7] Persons twenty-five years or older who had previously emigrated abroad are eligible for this sojourn

[1] Churipkuk kwalli pop [Immigration Control Act], Act No. 4522, Dec. 8, 1992, *last amended by* Act No. 10282, May 14, 2010, art. 7, para. 1.

[2] *Id*. art. 12, para. 1.

[3] *Id*. art. 12, para. 5.

[4] *Id*. art. 17, para. 1 & art. 18, para. 1. *See also*, *General Affairs*, HI KOREA, http://www.hikorea.go.kr/pt/InfoDetailR_en.pt?categoryId=2&parentId=389&catSeq=&showMenuId=376 (last visited Feb. 21, 2013).

[5] Haerim Cho, *Immigration Policy and Settlement Patterns of Migrants in South Korea and Singapore*, (PSA Conference 2011, Apr. 19–21, 2011), at 8, http://www.psa.ac.uk/journals/pdf/5/2011/1258_669.pdf.

[6] *Id*.

[7] Churipkuk kwallipop sihaeng ryung [Enforcement Decree of Immigration Control Act], Presidential Decree No. 13872, Mar. 30, 1993, *amended by* Presidential Decree No. 19904, Feb. 28, 2007, art. 23 & Table 1, item 31.

status, as are their lineal descendants.[8] Employment is permitted only in the industrial fields specified in the Enforcement Decree of Immigration Control Act, such as agriculture, small- and medium-sized manufacturing, construction, or the service industry.[9]

Foreign workers with Working Visit (H-2) visas must attend foreigner employment training conducted by the designated institution.[10] They then submit a foreign worker's job-search application to the head of a job center.[11] Employers who wish to hire foreign workers must choose them from among foreigners registered on the list of foreign workers and recommended by an employment security office in Korea.[12] A foreign worker and an employer may conclude an employment agreement for a period of up to three years.[13]

B. Non-professional Employment (E-9)

In the early 1990s, Korea established the Industrial Training System, in which temporary foreign workers were treated as trainees rather than as legal laborers. Undocumented workers increased under this system, so an Employment Permit System replaced the Industrial Training System in 2004.[14] The "Non-professional Employment (E-9)" visa was created as part of this system.[15] The new system allows employers who have been unable to hire local workers to legally employ foreign workers.[16]

For the "[t]ransparency of the foreign workforce selection and introduction process, and prevention of corruption practices and anomalies in the sending process," a Memorandum of Understanding (MOU) signed by Korea and the government of each country that sends workers is required for the Employment Permit System.[17] The introduction and selection of foreign

[8] *Id*. *See also*, Act on Immigration and Legal Status of Overseas Koreans, Act No. 6015, Sept. 2, 1999, *last amended by* Act No. 10543, Apr. 5, 2011, art. 2, subpara. 2.

[9] Enforcement Decree of Immigration Control Act, Presidential Decree No. 13872, Mar. 30, 1993, *last amended by* No. 22483, Nov. 15, 2010, Table 1, item 31.

[10] Oegugin Keunroja ui koyoung dung e kwanhan popryul [Act on the Employment, etc. of Foreign Workers (Foreign Workers Employment Act)], Act No. 6967, Aug. 16, 2003, *last amended by* Act No. 10339, June 4, 2010, art. 11. *See also*, *Employment Procedures Concerning Working Visit (H-2) Visa Holders*, MINISTRY OF GOVERNMENT LEGISLATION (Oct. 15, 2012), http://oneclick.law.go.kr/CSM/OvCnpRetrieveP.laf?csmSeq=665&ccfNo=3&cciNo=2&cnpClsNo=2.

[11] Foreign Workers Employment Act art. 12, para. 2.

[12] *Id*. art. 8, paras. 3 & 4.

[13] *Id*. art. 9, para. 3

[14] *Id*.

[15] Enforcement Decree of Immigration Control Act art. 23 & Table 1, item 25-3.

[16] Foreign Workers Employment Act arts. 6 & 8, para. 1.

[17] *Introduction of Employment Permit System*, EMPLOYMENT PERMIT SYSTEM, https://www.eps.go.kr/ph/index.html (click on "Introduction of Employment Permit System" under "Overview" tab at the top of the page) (last visited Feb. 26, 2013).

workers are administered based on these MOU. There is no intermediation by recruitment agencies.[18]

Eligible foreign workers "may be employed in businesses the size and industry of which shall be determined by the Minister of Labor through the Foreign Workers Introduction Plan."[19] The system allows employers who employ less than 300 regular workers to hire foreign workers in industries with labor shortages, such as agriculture and stockbreeding, fisheries, construction, and manufacturing. The procedure for nonprofessional foreign workers to be employed is as follows:

- register on the list of foreigners seeking jobs;
- be chosen by an employer and obtain a permit;
- sign a labor contract;
- apply for visa;
- enter the country; and
- complete the foreigner employment training.[20]

Foreigners intending to be registered on the list of foreign workers must meet the conditions for selection, which include Korean language proficiency.[21] Employers who wish to hire foreign workers must choose them from among foreigners registered on the list of foreign workers and recommended by an employment security office in Korea.[22] After an employer has chosen an employee, the employment security office issues an employment permit to the employer.[23] Then, the employer and the foreigner enter into a contract.[24] The employer applies for a Certificate for Confirmation of Visa Issuance (CCVI) for the worker to the Korean Ministry of Justice (MOJ).[25]

When a foreign worker enters Korea, he or she must meet a Korean government official at the airport and go to an Employment Training Center. Foreign workers must complete Employment Training before starting work under the employer.[26]

---

[18] Foreign Workers Employment Act art. 8, para. 6.

[19] *Id*. arts. 4 & 5.

[20] *Non-professional Employment (E-9) Visa Holders' Employment Procedure*, MINISTRY OF GOVERNMENT LEGISLATION (Oct. 15, 2012), http://oneclick.law.go.kr/CSM/OvCnpRetrieveP.laf?csmSeq=501&ccfNo=3&cciNo=2&cnpClsNo=1.

[21] Foreign Workers Employment Act art. 7, para. 2.

[22] *Id*. art. 8, paras. 3 & 4.

[23] *Id*. art. 8, para. 4.

[24] *Id*. art. 9.

[25] *Id*. art. 10.

[26] *Id*. art. 11. *See also*, MINISTRY OF GOVERNMENT LEGISLATION, *supra* note 20.

III. Visa Conditions

The number of foreign workers that may be hired by an employer is specified in the annual foreign worker introduction plan announced by the Ministry of Employment and Labor.[27] The types of businesses or number of foreign workers that may be introduced for each country that has signed a workforce dispatch MOU with Korea is also announced by the plan.[28]

H-2 foreign workers are not tied to their employer and do not have to obtain a permit from the Minister of Justice.[29] However, a certain procedure must be followed to change employers. The foreign worker must apply to a job center for a change of workplace within one month of the termination or expiration of the employment agreement.[30] E-9 foreign workers can work only at the designated working place.[31] If they intend to change or add a workplace, they must obtain prior permission from the Minister of Justice.[32]

Foreign workers' employment periods are, in general, limited to three years.[33] The employment period can be extended only once for up to two years.[34] A path exists for H-2 status holders to become permanent residents, but not for E-9 status holders.[35]

IV. Admission Status of Family Members

Overseas Koreans who have obtained H-2 status are allowed to invite family members, depending on their employment period.[36]

---

[27] *Id*. art. 5, para. 1.

[28] *Id. See also*, *Businesses and Number of Foreign Worker Introduction*, MINISTRY OF GOVERNMENT LEGISLATION (Oct. 15, 2012), http://oneclick.law.go.kr/CSM/OvCnpRetrieveP.laf?csmSeq=501&ccfNo=2&cciNo=1&cnpClsNo=2.

[29] Foreign Workers Employment Act art. 12, para. 7; Immigration Control Act art. 21.

[30] Foreign Workers' Employment Act art. 25, paras. 1 & 3.

[31] Immigration Control Act art. 18, para. 2.

[32] *Id*. art. 21.

[33] Foreign Workers Employment Act art. 18, para. 1.

[34] *Id*. art. 18-2, para. 1.

[35] Enforcement Decree of Immigration Control Act art. 23 & Table 1, item 28-3.

[36] Cho, *supra* note 5, at 9.

SPAIN

Graciela Rodriguez-Ferrand
Senior Foreign Law Specialist

SUMMARY Spain has experienced a tremendous amount of immigration in the last decade. Most of the immigrants have come from Africa, Latin America, and Eastern Europe. A large number of these are low-skilled migrants entering Spain on a temporary or seasonal work visa. One of the ways seasonal and temporary foreign workers are hired is through a process of collective recruitment in the country of origin, which is preferably implemented with countries that have signed bilateral migration agreements with Spain.

I. Introduction

Since the 1990's Spain has evolved from a country of emigrants to a country of immigrants, with profound social, economic, political, legal, and cultural consequences. The largest number of these immigrants come from Africa, Latin America, and Eastern Europe.[1] Many of these low-skilled migrants come to Spain with a temporary or seasonal work visa.[2] Since 2010 the flow of immigrants into Spain has decreased considerably owing to the economic crisis, high unemployment, and the financial troubles that the country is still trying to overcome.[3]

In order to adapt the immigration laws to the new immigration reality and labor market, a comprehensive immigration law was enacted in 2000—Ley Orgánica 4/2000 sobre Derechos y Libertades de los Extranjeros en Espana y su Integración Social (Organic Law on the Rights and Freedoms of Foreigners in Spain and their Social Integration 4/2000),[4] which has been amended several times and further implemented by Real Decreto 557/2011.[5]

[1] S. GARGANTE ET AL., LA DISCRIMINACION RACIAL, PROPUESTAS PARA UNA LEGISLACION ANTIDISCRIMINATORIA EN ESPANA 5 & 13 (Ceres, Barcelona, 2003).

[2] Philip Martin, *Temporary Worker Programs: US and Global Experiences*, University of California, Davis, 11–12 (Mar. 15, 2008), http://canada.metropolis.net/policypriority/migration_seminar/PhilipMartinsPaper_e.pdf.

[3] *Disminuye entrada de Inmigrantes a Espana por Crisis*, LA VANGUARDIA (Mar. 31, 2011), http://www.vanguardia.com/historico/98903-disminuye-entrada-de-inmigrantes-a-espana-por-crisis.

[4] Ley Orgánica 4/2000 sobre Derechos y Libertades de los Extranjeros en Espana y su Integración Social (LODLE), Jan, 11, 2000, BOLETIN OFICIAL DEL ESTADO (B.O.E), Jan. 12, 2000, *as amended* by Organic Law 2/2009, http://www.boe.es/buscar/act.php?id=BOE-A-2000-544.

[5] Real Decreto 557/2011, por el que se aprueba el Reglamento de la Ley Orgánica 4/2000, sobre derechos y libertades de los extranjeros en España y su integración social, tras su reforma por Ley Orgánica 2/2009 (RLODLE), B.O.E. Apr. 30, 2011, http://www.boe.es/buscar/pdf/2011/BOE-A-2011-7703-consolidado.pdf.

II. Eligibility for Admission as a Temporary Worker

In order to qualify for a temporary work visa, the following requirements must be met:[6]

1- The foreigner is sixteen years or older.

2- The foreigner is enrolled in the Social Security system.

3- The foreigner has a labor contract guaranteeing employment for the period of time authorized in the work permit issued to him or her.

4- The vacancy for the position has not been filled by nationals and the national labor market is in need of foreign workers.[7]

5- The foreigner is not a citizen of any European Union country, which would be governed by EU regulations.[8]

6- The foreigner is not in the country in violation of the immigration laws.[9]

7- The foreigner has not been forbidden to enter the country.[10]

8- The foreigner has a certificate of good health[11];

9- The foreigner does not have a criminal background in Spain or any other country where he or she has resided in the last five years.[12]

10- The "no return" period agreed upon in the voluntary return program has expired.[13]

11- The labor contract conditions meet the Spanish labor law standards.[14]

12- The employer has the economic and personal means to fulfill the labor contract obligations.[15]

13- The foreigner has the skills or competence needed to fulfill the labor contract obligations.[16]

III. Recruitment

Work offers must be posted for twenty-five days in order to recruit national workers.[17] If there are no Spanish nationals interested in the job, the employers advertise the job offers to foreign

[6] LODLE art. 36.

[7] *Id*. art. 38; RLODLE art. 64.3.a.

[8] LODLE art. 1.

[9] *Id*. art. 25; RLODLE art. 64.2.a.

[10] LODLE art. 26.1

[11] *Id*. art.4.1.8.

[12] *Id*. art. 64.2.b

[13] *Id*. art. 64.2.d.

[14] RLODLE art. 64.3.c.

[15] *Id*. art. 64.3.e.

[16] *Id*. art. 64.3.f.

workers for three months before the starting date of the work assignment.[18] Business and labor union organizations are consulted and given an opportunity to render their opinion on the foreign work offers.[19] Once approved by the government, the labor contract is sent to the foreign worker for signature before the Spanish consular office in the worker's country.[20]

One of the ways seasonal and temporary foreign workers are hired is through a process of collective recruitment in the country of origin. This process allows for the hiring of foreign workers upon general work offers for fixed-term work.[21] The process was developed by the Ministry of Labor and Immigration (MLI) in consideration of the national employment situation as assessed by the National Public Employment Service.[22] The MLI approves an annual estimate of the number and types of jobs that would qualify for the collective recruitment process in the country of origin during a certain period.[23]

Spanish authorities in collaboration with their counterparts in the foreign workers' countries of origin participate in selecting candidates for job vacancies.[24] Spanish authorities collect actual vacancies from Spanish employers while authorities in the country of origin provide the selection of candidates for those vacancies. The job offers under this modality are preferably addressed to countries with which Spain has signed bilateral migration agreements.[25] Spain has signed bilateral agreements on the regulation and management of migration flows with Colombia, Morocco, Dominican Republic, Ecuador, Mauritania, Ukraine, Poland, Bulgaria, and Romania.[26] It has also signed bilateral cooperation agreements on immigration with Gambia, Guinea Bissau, Senegal, Niger, El Salvador, Honduras, Argentina, Guinea, Republic of Cape Verde, Mali, Mexico, the Philippines, and Paraguay.[27]

---

[17] *Id*. art. 100.2.a.

[18] *Id*. art. 100.2.b

[19] *Id*. art. 100.2.c.

[20] *Id*. art. 100.4.

[21] LODLE art. 39.

[22] *Id*. art. 39.1.

[23] *Id*.

[24] *Id*. art. 39.2.

[25] *Id*. art. 39.3.

[26] *Convenios Migratorios* [*Migration Agreements*], MINISTERIO DE EMPLEO Y SEGURIDAD SOCIAL, SECRETARÍA GENERAL DE INMIGRACIÓN Y EMIGRACIÓN, http://extranjeros.empleo.gob.es/es/normativajurisprudencia/internacional/ConveniosBilaterales/ConveniosMigratorios/ (last visited Feb. 25, 2013).

[27] Gestión Colectiva de Contrataciones de Origen [Collective Management of Recruitment in the Country of Origin] Hoja Informativa No. 52, Ministerio de Trabajo e Inmigración, 5, Sept. 2011, http://extranjeros.empleo.gob.es/es/informacioninteres/informacionprocedimientos/documentos2/52.pdf.

IV. Visa Conditions

A temporary work visa allows a worker to work for up to nine months within a twelve-month period.[28] In order to obtain a temporary work visa, the employer must secure housing facilities that are clean and in dignified condition for the prospective workers.[29] Temporary workers also have access to social services.[30] Temporary work should be offered preferably to countries that have signed bilateral migration agreements with Spain.[31] Temporary work visas may be extended for nine months if the labor contract is extended.[32]

Temporary workers assume the responsibility of returning to their country once the labor contract expires.[33] Noncompliance with the return requirement is grounds for denying future work requests for the three years following the first authorization.[34] In order to establish the actual return, workers must appear in person at the Spanish consulate or office that issued their work permit to record and obtain a document to prove their return.[35]

The employer must organize the trip to Spain and back to the country of origin, assuming the costs of at least the trip to Spain, transportation to and from the port of entry, and housing.[36]

V. Admission Status of Family Members

Family members of temporary workers may be issued a temporary residence visa under the family reunification rules.[37] The law specifies the family members who qualify for this visa.[38] In order to obtain a temporary nonwork permit visa for a family member, applicants must prove that they have sufficient economic resources for the family member's support.[39] The temporary residence under family reunification may only be issued when the foreign worker has a permit to work in Spain for at least one year.[40]

---

[28] LODLE art. 25 bis.2.e; RLODLE art. 98.3.

[29] LODLE art. 42.2.

[30] *Id*. art. 42.3; RLODLE art. 99.3.a.

[31] LODLE art. 42.4.

[32] RLODLE art. 102.

[33] *Id*. art. 99.2.

[34] *Id*.

[35] *Id*. art. 99.2, last para.

[36] *Id*. art. 99.3.b.

[37] *Id*. art. 45.1, 45.2.b, 52.

[38] *Id*. art. 53.

[39] *Id*. art. 47.

[40] *Id*. art. 56.1.

Family members of temporary workers have access to social and assistance services, including education and housing. These services are mainly provided at the regional level of the Autonomous Communities.[41]

[41] JOSÉ ANTONIO FERNANDEZ AVILÉS ET AL., INMIGRACIÓN Y CRISIS ECONÓMICA: RETOS PÓLITICOS Y DE ORDENACIÓN JURÍDICA [IMMIGRATION AND ECONOMIC CRISIS: POLITICAL AND LEGAL CHALLENGES] 673–77 (Editorial Comares, Granada, 2011).

UNITED ARAB EMIRATES

Issam M. Saliba
Foreign Law Specialist

I. Introduction

According to the National Bureau of Statistics of the United Arab Emirates (UAE), the estimated population of the country as of mid-2010 was 8,264,070, of which 7,316,073 (more than 80%) were foreigners.[1] The admission and stay of foreigners in the country, including migrant workers, are regulated by federal rather than local law.[2]

II. Definition of Foreigner

The 1973 immigration law states that anyone who does not hold the citizenship of the United Arab Emirates is a foreigner.[3] No foreigner is allowed to enter the country unless he or she has a valid passport or equivalent travel document and a visa, a permission to enter, or a valid residency permit.[4]

III. Residency Permits Generally

The General Directorate of Citizenship and Stay is the competent authority entrusted by law to issue residency permits for a period not to exceed three years. Such permits may be renewed prior to their expiration date.[5]

A foreigner who enters the country as a visitor shall not be granted a residency permit except for a bona fide reason[6] and shall leave upon the cancellation of his permit or the expiry of its term.[7]

---

[1] UNITED ARAB EMIRATES NATIONAL BUREAU OF STATISTICS , POPULATION ESTIMATES 2006–2010, http://www.uaestatistics.gov.ae/ReportPDF/Population%20Estimates%202006%20-%202010.pdf.

[2] Law of Entry and Stay of Foreigners, Law No. 6 of 1973, *available at* the website of the Courts of Dubai http://www.dubaicourts.gov.ae/portal/page?_pageid=292,455214&_dad=portal&_schema=PORTAL&_piref292_457219_292_455214_455214.called_from=1&_piref292_457219_292_455214_455214.law_key=18 (in Arabic), as amended by Law No. 13 of 1996, *available at* the website of the Courts of Dubai http://www.dubaicourts.gov.ae/portal/page?_pageid=292,455214&_dad=portal&_schema=PORTAL&_piref292_457219_292_455214_455214.called_from=4&_piref292_457219_292_455214_455214.law_key=77 (in Arabic).

[3] *Id*. art. 1.

[4] *Id*. art. 2.

[5] *Id*. art. 17, as amended.

[6] *Id*. art. 18.

[7] *Id*. art. 19.

IV. Residency Permits for Migrant Workers

A worker is defined as any person, male or female, who works in exchange for remuneration under the authority and supervision of an employer, no matter what the nature of the work is.[8]

An employer who wishes to employ foreign workers must submit a request in this regard on the form designed by the Ministry of Labor in which he commits to

1. sponsor and be responsible for the worker to be engaged;
2. prepare and execute the employment contract and take whatever other necessary actions that may be required of him within one week at most from the time the worker arrives; and
3. repatriate the worker, when necessary, to the place where he came from.[9]

The Ministry of Labor refers the requests it approves to the General Directorate of Citizenship and Stay or other authorities pursuant to the instructions issued by the Ministry of Interior.[10] In order for requests to be approved, the foreign candidate must have reached the age of seventeen years. The Ministry of Labor can only approve the application if there is no citizen available to do the work.[11]

Other requirements may be imposed on foreigners seeking residency in the UAE, such as a requirement to undergo a medical examination.[12]

The General Directorate of Citizenship and Stay may issue non-work residency permits to foreigners for the purpose of joining the head of their family or their bona fide guardian.[13]

V. Permanent Residency and Citizenship

Residency permits granted to migrant workers are for a limited period of time and cannot lead, regardless of the length of residency, to citizenship or permanent residency.

---

[8] Decision of the Council of Ministers No. 3 of 1977 Regarding the Recruitment and Employment of Foreign Workers, art. 1, *available at* the website of the Courts of Dubai http://www.dubaicourts.gov.ae/portal/page?_pageid=292,455214&_dad=portal&_schema=PORTAL&_piref292_457219_292_455214_455214.called_from=1&_piref292_457219_292_455214_455214.law_key=395 (in Arabic).

[9] *Id.* art. 7.

[10] *Id*. art. 10.

[11] *Id.* art. 4.

[12] *See* Nick Lewandowski, *New Health Exam Requirements for Expats in the UAE*, EXPATHEALTH.ORG (May 5, 2011) http://expathealth.org/country-alerts/new-health-exam-requirements-for-expats-in-the-uae/.

[13] Implementation Regulations of Law No. 6 of 1973, art. 28, art. 57, *available at* the website of the Courts of Dubai http://www.dubaicourts.gov.ae/portal/page?_pageid=292,455214&_dad=portal&_schema=PORTAL&_piref292_457219_292_455214_455214.called_from=1&_piref292_457219_292_455214_455214.law_key=214&_piref292_457219_292_455214_455214.item_key=32 (in Arabic).

UNITED KINGDOM

Clare Feikert-Ahalt
Senior Foreign Law Specialist

SUMMARY The United Kingdom has established an immigration system for temporary workers under Tier 5 of its points-based immigration system. Tier 3 of the points-based system, which would allow for low-skilled workers to fill temporary labor shortages, has never been brought into operation. Applicants under Tier 5 must have a job before they enter the UK and be sponsored by a UK-based employer who is licensed. They must also show proof that they have a certain amount of funds that will help maintain them once they get arrive in the UK. Family members may travel with Tier 5 workers, provided they can show they also have enough funding to support themselves. There is no ability to obtain permanent residence or citizenship by entering the UK through this program.

I. Introduction

Since 1891 it has been established at common law that "no alien has any right to enter [what is now the United Kingdom] except by leave of the Crown."[1] The Aliens Restriction Act 1914,[2] the Aliens Restriction (Amending) Act 1919,[3] and rules and orders made under these acts,[4] gave the common law a statutory basis and formed the restrictions on immigration for much of the 20th Century. The statutory regime governing immigration in the United Kingdom (UK) is now contained in the Immigration Act 1971[5] and the Immigration Rules[6] made under it. The law requires that individuals who are not British or Commonwealth citizens with the right of abode in the UK, or members of the European Economic Area,[7] obtain leave to enter the UK from an immigration officer upon their arrival.[8]

[1] Musgrove v. Chun Teeong Toy [1891] A.C. 272, *followed in* Schmidt v. Home Office [1969] 2 Ch. 149.

[2] Aliens Restriction Act, 1914, 4 & 5 Geo. 5, c. 12.

[3] Aliens Restriction (Amendment) Act, 1919, c. 92, http://www.legislation.gov.uk/ukpga/Geo5/9-10/92/contents.

[4] *E.g.*, Aliens Order, (1920) Stat R. & O. 448 (as amended).

[5] Immigration Act 1971, c. 77, http://www.legislation.gov.uk/ukpga/1971/77/contents.

[6] Immigration Rules (as amended) (Jan. 2013), *available at* http://www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/; R v Chief Immigration Officer, Heathrow Airport, ex. p. Salamat Bibi [1976] 3 All ER 843 (CA) per Roskill, LJ: "these rules are [not administrative practice and are] just as much delegated legislation as any other form of rule making activity [and] to my mind, are just as much a part of the law of England as the 1971 Act itself."

[7] The European Economic Area consists of the Members of the European Union, plus Norway, Iceland, and Liechtenstein.

[8] Immigration Act 1971, c. 77 § 3, http://www.legislation.gov.uk/ukpga/1971/77/section/3.

II. Temporary Workers

The UK's current immigration rules provide for a points-based tier system.[9] Admission into the UK for temporary workers is provided for by Tier 5. There are six categories of Tier 5 temporary workers:

- creative and sporting;
- charity workers;
- religious workers;
- those entering under government authorized exchange programs;
- those entering under international agreements; and
- those entering under the youth mobility scheme.[10]

None of these six categories is intended to provide a means for low-skilled workers to enter the UK. Tier 3 of the points based system would provide for low-skilled workers to fill specific temporary labor shortages, but that tier has never been brought into operation, as the government considers that much of the UK's low-skilled labor force needs are being met by workers from the expanded European Union.[11]

To obtain for a visa under almost all Tier 5 categories, the applicant must have a job offer from a sponsor licensed in the UK; have a valid certificate of sponsorship from this sponsor prior to applying for the visa; and score a certain number of points on an assessment. To qualify as a Tier 5 temporary worker in most categories the applicant must score 30 points (for a certificate of sponsorship) and 10 points by demonstrating they have maintenance funds of at least £900 (approximately US$1400) in a bank account.[12] Certain workers may be exempt from demonstrating the maintenance funds if an "A rated" sponsor certifies that they will not claim public funds during their stay as a temporary worker.[13]

A sponsor is a UK-based organization that has registered as a licensed sponsor and meets the requirements for the particular category of Tier 5. Employers must assign prospective

[9] Immigration Rules, part 6A, http://www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/part6a/.

[10] *Temporary Workers*, HOME OFFICE UK BORDER AGENCY, http://www.ukba.homeoffice.gov.uk/visas-immigration/working/tier5/ (last visited Feb. 25, 2013).

[11] MIGRATION ADVISORY COMMITTEE, LIMITS ON MIGRATION 2.10 (2010), *available at* http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/workingwithus/mac/mac-limits-t1-t2/report.pdf?view=Binary.

[12] HOME OFFICE, UK BORDER AGENCY, TIER 5 (TEMPORARY WORKER) OF THE POINTS-BASED SYSTEM - POLICY GUIDANCE ¶ 135 (Dec. 2012), *available at* www.ukba.homeoffice.gov.uk/sitecontent/applicationforms/pbs/tier5temporaryworkerguidan1.pdf.

[13] Immigration Rules App. A, ¶ 105, http://www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/appendixa/, *and* App. C, ¶ 8, http://www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/appendixc/.

employees with a Certificate of Sponsorship, which is required before an application can be made and provides assurance that the applicant is able and intends to work in a specific job.[14]

Accruing the requisite number of points alone does not guarantee a successful application, and the UK Border Agency bases its decision on the complete application and evidence provided to support it.[15] Eligibility for entry as a Tier 5 temporary worker may be refused on "general grounds" even if the applicant is otherwise fully eligible. These general grounds are extensive, and include a criminal history, a previous breach of the immigration rules, and the like.[16]

III. Sponsor Responsibilities

The sponsor is responsible for keeping records of the applicant's passport, immigration documents and contact details. It is obliged to report to the UK Border Agency if

- a sponsored worker does not show for work on their first day;
- he or she is absent from work for more than ten working days without permission;
- his or her job ends for any reason;
- his or her sponsorship ends for any reason; or
- he or she has any changes in circumstances, such as a change of job.[17]

The notification requirement also arises if the sponsor believes the worker is breaching the conditions of his or her immigration status or is engaging in criminal or terrorist activity.[18]

IV. Visa Conditions

Individuals entering as a temporary worker may engage in work that is supplementary to work for which they were granted leave to enter the country, provided the job is for less than twenty hours per week, does not interfere with the hours for which the certificate of sponsorship was originally granted, and is "on the shortage occupation list in Appendix K[19] of the Immigration Rules or a job in the same sector and at the same level as the work for which the Certificate of Sponsorship was assigned."[20]

---

[14] HOME OFFICE, UK BORDER AGENCY, *supra* note 12, ¶ 44.

[15] *Id*. ¶ 13.

[16] HOME OFFICE, UK BORDER AGENCY, GENERAL GROUNDS FOR REFUSAL (Dec. 2012), www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/modernised/general-grounds-refusing/about.pdf?view=Binary

[17] HOME OFFICE, UK BORDER AGENCY, *supra* note 12, ¶ 60.

[18] *Id*. ¶ 60.

[19] *Immigration Rules*, App. K, http://www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/appendixk/. There is a wide range of jobs that are experiencing shortages and are listed in this appendix, including civil engineers, biological scientists, software professionals, medical practitioners, social workers, nurses, dancers and artists.

[20] HOME OFFICE, UK BORDER AGENCY, *supra* note 12, ¶ 158.

In almost all Tier 5 categories workers may change jobs while in the UK as a Tier 5 worker. The new job can be either with the same sponsor, or a new one. If a new sponsor is used, the worker must be provided with a new certificate of sponsorship and the applicant must provide new evidence that they meet the maintenance requirement. The rules do not permit Tier 5 workers to switch into a different tier or category and they may only stay the maximum time permitted in the Tier 5 category they originally selected.[21]

If a temporary worker's employment ends before the time allotted in their visa, the UK Border Agency will reduce the duration of stay to a maximum of sixty days.[22] There is no method through which a person who is in the UK as a Tier 5 worker can apply for permanent residence or citizenship.[23]

V. Family Members

In almost all tier 5 categories, the applicant's dependents may be given permission to stay or enter the UK if the Tier 5 application is successful. Dependents in this instance are considered to be an applicant's

- spouse,
- civil partner,
- unmarried or same sex partner, or
- child aged eighteen years or under.[24]

As with Tier 5 applicants, dependents must also demonstrate that they have enough funds available for their support for the duration of their stay. It must be shown that each dependent has at least £600 (approximately US$1,000) available in addition to the maintenance fund required for the Tier 5 worker.[25]

VI. Tier 5 Categories

There are some specific provisions that apply to each of the Tier 5 categories that are briefly summarized below.

---

[21] *Id*. ¶ 164-5.

[22] *Id.* ¶ 85.

[23] *Tier 5 (Temporary Worker - Government Authorised Exchange)*, HOME OFFICE, UK BORDER AGENCY, www.ukba.homeoffice.gov.uk/visas-immigration/working/tier5/government-authorised-exchange/settlement/ (last visited Feb. 25, 2013).

[24] *Tier 5 (Temporary Worker - Creative and Sporting)*, HOME OFFICE, UK BORDER AGENCY, www.ukba.homeoffice.gov.uk/visas-immigration/working/tier5/creativeandsporting/dependants/eligibility/ (last visited Feb. 25, 2013).

[25] HOME OFFICE, UK BORDER AGENCY, POINTS BASED SYSTEM (DEPENDENT) POLICY GUIDANCE, ¶ 77 (Dec. 2012), www.ukba.homeoffice.gov.uk/sitecontent/applicationforms/pbs/pbsdependantspolicy1.pdf.

A. Creative and Sporting

To enter the UK as a sportsperson in the Tier 5 category, the individual must be internationally established at the highest level and/or their employment must make a significant contribution to the development and running of high level sport, and a suitably qualified person is not available in the UK. Sponsors of sportspersons must obtain an endorsement to this effect from the governing body of their sport that is recognized by the UK.[26] Requirements for coaches are less onerous and simply require that the individual be suitably qualified to perform the job.[27]

Sponsors of creative workers must follow a code of practice in the Immigration Rules which requires taking the needs of the resident labor market into account. If a job is not covered by a code of practice the sponsor is required to show that a settled worker could not fill the post.[28]

Sportspersons may be in the country for a maximum of twelve months. There are no ways for sportspersons to extend a stay past that time.[29] Creative workers may receive entry clearance for up to twelve months, extendable for a maximum of twenty-four months, provided they remain with the same sponsor.[30]

B. Religious Workers

Religious workers may be admitted into the UK for a maximum stay of twenty-four months to preach and do both pastoral and non-pastoral work.[31]

C. Charity Workers

Charity workers may enter the UK for a maximum of twelve months to do unpaid voluntary work.[32] They must not receive paid employment and must intend to carry out work "directly related to the purpose of the sponsoring organisation."[33]

D. Government Authorized Exchange Programs

The government authorized exchange category is "for those coming to the United Kingdom through approved schemes that aim to share knowledge, experience and best practice through work placements, whilst experiencing the wider social and cultural setting of the United Kingdom. This category cannot be used to fill job vacancies or provide a way to bring unskilled

---

[26] HOME OFFICE, UK BORDER AGENCY, *supra* note 12, ¶ 101.

[27] *Id.* ¶ 100.

[28] *Id.* ¶ 104.

[29] *Id.* ¶ 88.

[30] *Id.*

[31] *Id.*

[32] *Id.*

[33] *Id.* ¶ 119.

labour to the United Kingdom."[34] Programs provided for under this category include work experience programs, research programs and training programs.[35]

Individuals in this category, with limited exceptions, may not be sponsored by individual employers or organizations as is required by most other Tier 5 categories. Instead, an overarching government body is responsible for assigning certificates of sponsorship.[36]

Entry into the UK in this category is for a maximum period of twenty-four months.[37]

E. International Agreements

The international agreements category is for individuals that enter the UK under contract to provide a service covered under international law, such as private servants in diplomatic households and employees of overseas governments and international organizations.[38] For private servants of diplomatic households the sponsor must guarantee that the applicant is at least eighteen years old and will be employed as a private servant to a named member of staff of a diplomatic or consular mission or to a named official employed by an international organization. The sponsor must also guarantee that the applicant intends to do domestic work on a full time basis for them, will not perform other work, and will leave the UK once his or her permission to stay ends.[39] Overseas governments and international organizations that act as a sponsor must guarantee that the applicant is under a contract of employment with them, will only work in the job specified in the application, and will not change into a different category of worker within the international agreements category upon entry into the UK.[40]

Entry into the UK under this category is for a maximum period of twenty-four months, with limited exceptions that include private servants in diplomatic households and employees of overseas governments.[41]

F. Youth Mobility Program

The youth mobility program is open for young people aged eighteen to thirty-one years old on the date of application. Once in the country, individuals in this category may extend their stay for up to two years, but may not transfer into another tier or category.[42] Applicants under this

[34] *Id.* ¶ 125.

[35] *Id.*

[36] *Id.* ¶¶ 126, 127.

[37] *Id.* ¶ 88.

[38] *Id.* ¶ 130.

[39] *Id.* ¶ 132.

[40] *Id.* ¶ 131.

[41] *Id.* ¶ 88.

[42] HOME OFFICE, UK BORDER AGENCY, TIER 5 (YOUTH MOBILITY SCHEME) OF THE POINTS-BASED SYSTEM – POLICY GUIDANCE ¶ 35 (July 2012), *available at* http://www.ukba.homeoffice.gov.uk/sitecontent/applicationforms/pbs/tier5youthmobilityguidance1.pdf.

category must show evidence that they have sufficient maintenance by showing a bank balance of at least £1800 (approximately US$3500) to support themselves during their stay.[43] Individuals entering under this category may not bring dependents, and applicants must not have any children under the age of eighteen living with them, or for whom they are financially responsible.[44]

There are only certain countries whose residents may participate in the program, and there are restrictions on the number of available places for each country that participates. For 2013, the limits are as follows:

- Australia – 35,000 places
- Canada – 5,500 places
- Japan – 1,000 places
- Monaco – 1,000 places
- New Zealand – 10,000 places
- Republic of Korea – 1,000 places
- Taiwan – 1,000 places.[45]

[43] *Id*. ¶ 46.

[44] *Id*. ¶ 35.

[45] *Youth Mobility Scheme*, HOME OFFICE, UK BORDER AGENCY, http://www.ukba.homeoffice.gov.uk/visas-immigration/working/tier5/youthmobilityscheme/ (last visited Feb. 25, 2013).

EUROPEAN UNION

Theresa Papademetriou
Senior Foreign Law Specialist

SUMMARY Immigration is a shared competence between the European Union (EU) and its twenty-seven Member States. The EU has the power to legislate and it has done so in the areas of visas, residence permits, family reunification, and illegal immigration, among others. At the same time, EU Members have the right to determine the number of admissions of third-country nationals in their territory for employment purposes, including temporary workers and are also responsible for integration policies concerning third-country nationals who reside legally within their territory.

Currently, guest workers programs are dealt by the EU Member States. In 2010 the European Commission adopted a Proposal for a Directive on Seasonal Employment. If adopted by the European Parliament and Council, it would establish a fast-track procedure and a single residence/work permit for seasonal workers. The Proposed Directive would also endorse the policy of circular migration by introducing a multiseasonal permit to allow the same workers to enter the EU market in subsequent seasons. EU Members would be required to accord to seasonal workers certain rights regarding working conditions, including access to health and safety requirements, social security, and a statutory pension, similar to those rights accorded to their nationals. The family reunification rules do not apply to seasonal workers. In addition, there is no path to permanent residence.

I. Introduction

Currently, the laws of the Member States of the European Union (EU) govern the admission of workers from third (non-EU) countries, including the admission of unskilled workers for short periods of time (guest workers), with a few exceptions.. This, however, may change in the near future because the European Commission has a adopted a proposal for a Directive on Seasonal Labor. The following chapters of this report describe EU immigration policy, the legislative powers of the EU in the area of immigration, the factual situation in the Member States, some aspects of EU law that the immigration laws of the Member States must currently observe, and the Proposed Directive.

II. Current Situation

A. European Immigration Policy

In the area of immigration, the European Union's general objective, as envisioned in the Action Plan Implementing the Stockholm Programme between 2010–2014,[1] is to establish a

[1] *Communication from the European Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Delivering an Area of Freedom, Security and Justice for*

comprehensive immigration policy designed to support legal migration, fulfill labor needs in the markets of the twenty-seven EU Member States, combat illegal immigration through readmission agreements and return policies, and at the same time effectively manage its external borders. Central to the EU's policy on legal migration is the integration of third-country nationals who reside legally in the EU and hold long-term residence permits. The EU is mandated by the 2009 Treaty on the Functioning of the European Union to treat such third-country nationals "fairly."[2] Subsequent secondary EU legislation gave effect to the fair treatment requirement by granting legal, third-country nationals rights and obligations comparable to those accorded to EU citizens.[3]

The EU's first priority in the field of immigration is to attract highly-skilled workers to ensure that the EU remains competitive.[4] Directive 2009/50/EC,[5] the so-called Blue Card Directive, is designed to attract highly-qualified, third-country nationals. It is based on a work contract and does not create a right of admission, in an effort to avoid "brain drain" in the countries of origin.

In its 2011 Communication on the Global Approach to Migration and Mobility the European Commission indicated that, despite the economic crisis, many EU Members experience a shortage of labor in the fields of health, science, and technology that cannot be filled with domestic workers.[6] An ability to attract migrants that corresponds to EU labor shortage needs is deemed a major challenge, the resolution of which could solve the shortage experienced in the labor market and also potentially provide an answer to the labor and economic challenges

---

Europe's Citizens: Action Plan Implementing the Stockholm Programme, COM (2010) 171 final (Apr. 20, 2010), http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0171:FIN:EN:PDF.

[2] Consolidated Version of the Treaty on the Functioning of the European Union (TFEU) art. 79, 2012 OFFICIAL JOURNAL OF THE EUROPEAN UNION [O.J.] (C 326) 47, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2012:326:0047:0200:EN:PDF.

[3] *See* Council Directive 2003/109/EC of 25 November 2003 Concerning the Status of Third-country Nationals Who Are Long-term Residents, 2004 O.J. (L 16) 44, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:016:0044:0053:EN:PDF. The need for such a policy on integration was initially recognized in 1999 by the European Council at Tampere, Finland. Tampere European Council, 15 and 16 of October 1999, Presidency Conclusions, paras. 18–21, European Parliament, http://www.europarl.europa.eu/summits/tam_en.htm. It was reaffirmed by the Stockholm Program, adopted by the European Council in December 2009. The Stockholm Programme: An Open and Secure Europe Serving and Protecting the Citizens, Annex, Council of the European Union, Presidency, European Council, (Dec. 2, 2009), http://register.consilium.europa.eu/pdf/en/09/st17/st17024.en09.pdf.

[4] *Communication from the European Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Communication on Migration*, at 13, COM (2011) 248 final (May 4, 2011), http://ec.europa.eu/home-affairs/news/intro/docs/1_EN_ACT_part1_v11.pdf.

[5] Council Directive 2009/50/EC, on the Conditions of Entry and Residence of Third-Country Nationals for the Purposes of Highly Qualified Employment, 2009 O.J. (L 155) 17, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:l:2009:155:0017:0029:en:PDF.

[6] *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, The Global Approach to Migration and Mobility*, at 2, COM (2011) 743 final (Nov. 18, 2011), http://ec.europa.eu/home-affairs/news/intro/docs/1_EN_ACT_part1_v9.pdf.

associated with the EU's aging population.[7] In 2011, the Commission acknowledged that more research is required to anticipate labor and skills shortages and to identify the role that migration can play in addressing these issues.[8]

The European Commission's next move was to propose a directive on admission and residence for seasonal workers.[9] Many EU Members have already been engaged in recruitment of temporary workers to fill vacancies in the agricultural and hospitality sectors, or to work as caregivers.[10]

B. Institutional Framework: Division of Competence and Applicability of Rules

At the EU level, immigration is a shared competence between the EU and its twenty-seven Member States. Based on article 79 of the Treaty on the Functioning of the EU (TFEU),[11] the EU has competence to establish a common immigration policy with the objectives of controlling migration flows, treating fairly third-country nationals (migrants) residing legally in Member States, and preventing and improving measures to fight illegal immigration.[12] Consequently, the EU has the power to legislate in the following areas:

(a) entry and residence of long-term visas, residence permits, and family reunification;

(b) rights of third-country nationals legally residing in a Member State; and

(c) illegal immigration, unauthorized residence, and removal and repatriation of illegal migrants.[13]

EU Members retain the right to determine the number of admissions of third-country nationals who will enter their territory for the purpose of employment, either as self-employed or contract

---

[7] Sheena McLoughlin et al., *Temporary and Circular Migration: Opportunities and Challenges* (European Policy Center, Working Paper No. 35, 2011), http://www.epc.eu/documents/uploads/pub_1237_temporary_and_circular_migration_wp35.pdf.

[8] *Communication on Migration*, *supra* note 4, at 12.

[9] *Proposal for a Directive of the European Parliament and of the Council, on the Conditions of Entry and Residence of Third-Country Nationals for the Purposes of Seasonal Employment*, COM (2010) 379 final (July 13, 2010), http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0379:FIN:EN:PDF.

[10] For country reports on circular migration, *see* EUROPEAN MIGRATION NETWORK, TEMPORARY AND CIRCULAR MIGRATION: EMPIRICAL EVIDENCE, CURRENT POLICY PRACTICE AND FUTURE OPTIONS IN EU MEMBER STATES 9 (Oct. 2011), http://emn.ie/files/p_201111110314492011_EMN_Synthesis_Report_Temporary_Circular_Migration_FINAL.pdf.

[11] TFEU, *supra* note 2, art. 79.

[12] Article 79, as revised by the Lisbon Treaty, is being interpreted as bestowing more authority on the EU than it previously held, to legislate for the purpose of establishing "a common immigration policy." 2 EU IMMIGRATION LAW: EU IMMIGRATION AND ASYLUM LAW (TEXT AND COMMENTARY) 13 (Peers et al. eds., 2d rev. ed. 2012).

[13] TFEU, *supra* note 2, art. 79, para. 2.

workers.[14] EU Members are also responsible for establishing and implementing integration policies for third-country nationals who reside legally in their territory.[15]

The territorial scope of the EU's immigration rules extends to twenty-four of the twenty-seven EU Member States. Denmark does not apply the rules on immigration, visas, and asylum. The United Kingdom and Ireland have the right to opt out of specific legislation on a case-by-case basis because of reservations made in Protocol No. 22[16] and Protocol No. 21,[17] respectively, to abstain from certain issues within the areas of freedom, security, and justice.

C. Factual Situation

According to some estimates, there are approximately 100,000 seasonal workers in the EU annually. This number also includes irregular migrants.[18] Statistics provided by the European Commission indicate that the volume of seasonal workers varies considerably across the EU: in 2008, Hungary admitted 919 seasonal workers, France 3,860, Sweden 7,552, and Spain close to 24,838. In many Member States, seasonal workers fill low-skilled jobs in sectors such as agriculture (60% of the seasonal labor force in Italy, 20% in Greece) and tourism (in Spain, 13% of all work permits issued in 2003 were for the hotel and catering sector). Certain regions of Austria rely on seasonal workers, hence the quota of 8,000 for the 2008/2009 winter season.[19] The areas that have been identified as in need of seasonal workers are agriculture, horticulture, and tourism. Many seasonal workers perform the work without a permit and many are subject to exploitation.[20]

---

[14] *Id*., para. 5.

[15] *Communication from the European Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, European Agenda for the Integration of Third-country Nationals*, COM (2011) 455 final (July 20, 2011), http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0455:FIN:EN:PDF.

[16] Protocol No. 22 on the Position of Denmark arts. 1 & 2, annexed to the Consolidated Versions of the Treaty on European Union (TEU) and the TFEU, 2012 O.J. (C326) 299, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2012:326:FULL:EN:PDF.

[17] Protocol No. 21 on the Position of the UK and Ireland in Respect of the Area of Freedom, Security and Justice arts. 1 & 2, *id*. at 295.

[18] Press Release, European Commission, Proposal for a Directive Establishing Common Entry and Residence Conditions for Third-Country Seasonal Workers (July 13, 2010), http://europa.eu/rapid/press-release_MEMO-10-323_en.htm.

[19] *Commission Staff Working Document, Summary of the Impact Assessment Accompanying the Proposal for a Directive of the European Parliament and of the Council on the Conditions for Entry and Residence of Third-country Nationals for the Purpose of Seasonal Employment*, at 2, SEC (2010) 888 (July 13, 2010), http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SEC:2010:0888:FIN:EN:PDF.

[20] *Work*, EUROPEAN COMMISSION HOME AFFAIRS, http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/immigration/work/index_en.htm (last updated Aug. 31, 2012).

D. Currently Applicable EU Law

1. Path to Permanent Residence/Citizenship

EU Members are required to grant resident status to third-country nationals who have legally and continuously resided for a period of five years in an EU Member State. In addition, such third country nationals must provide evidence that they possess sufficient financial resources so that they will not need to rely on the social assistance system, and that they have health insurance. These requirements are established by Directive 2003/109/EC on the Status of Third-Country Nationals Who are Long-Term Residents.[21] Seasonal workers are specifically excluded from the scope of this Directive.[22]

2. Family Reunification

Family reunification is governed by Council Directive 2003/86/EC on the Right to Family Reunification (Family Reunification Directive).[23] This Directive applies to "sponsors"—meaning third-country nationals legally residing in a Member State—who hold a residence permit and who have a reasonable likelihood of obtaining the right of permanent residence.[24] Seasonal workers fall outside the scope of this Directive.

The following family members of the sponsor, who are also third-country nationals, are eligible for family reunification:

- the sponsor's spouse
- minor children of the sponsor and his/her spouse, including adopted children
- minor children of a sponsor who has custody of such children

Minor children must be below the age of majority as determined by national legislation and be unmarried to claim eligibility.

Moreover, the Family Unification Directive gives flexibility to the Member States to grant entry and residence to

- first-degree relatives in the direct ascending line of the sponsor or his/her spouse, provided that such relatives lack sufficient financial resources in the country of origin;

---

[21] Council Directive 2003/109/EC of 25 November 2003 Concerning the Status of Third- Country Nationals Who are Long-Term Residents, 2003 O.J. (L16) 47, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:016:0044:0053:EN:PDF.

[22] *Id*. art. 3, para. 2(e).

[23] Council Directive 2003/86/EC of 22 September 2003 on the Right to Family Reunification, 2003 O.J. (L 251) 12, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:251:0012:0018:EN:PDF.

[24] *Id*. art. 4, para. 1(a)–(d).

- the adult unmarried children of the sponsor or his/her spouse when such children are unable to provide for themselves due to their health;[25]
- an unmarried partner with whom the sponsor has had a long-term relationship, provided that the partner is a third-country national, or a partner with whom the sponsor is bound by a registered partnership;
- unmarried minor children, including adopted children; and
- adult unmarried children who cannot provide for themselves.[26]

The Family Unification Directive requires EU Members to prohibit reunification of another spouse in the cases of polygamous marriage and where the sponsor already has a spouse living with him/her.[27]

EU Member States may also require that the sponsor and his/her spouse be of a minimum age before the spouse joins the sponsor. This is required in order to avoid the forced marriages that occur in some third countries.[28]

Applications for family reunification must be submitted with the necessary documentation to the competent authorities of the EU Member concerned, by the sponsor or his/her family members.[29] EU Member States have the right to reject an application for entry and residence of a family member based on grounds of public policy, public security, or public health.[30]

III. Proposed Directive

In 2010, the European Commission adopted the Proposal for a Directive on the Conditions of Entry and Residence of Third-Country Nationals for the Purposes of Seasonal Employment.[31]

At the EU level, the term "third-country nationals" denotes those who are not citizens of the EU, within the meaning of article 20(1) of the TFEU.[32] Under the Proposed Directive "seasonal worker" would be defined as a third-country national whose legal domicile is in a third country outside the EU, but who resides temporarily in an EU Member State in order to be employed "in a sector of activity dependent on the passing of the seasons. as a seasonal worker under one or more fixed-term work contracts." Such contracts would be agreed upon directly by the third-country national and the employer who is established in a Member State. "Activity dependent on the passing of the seasons" would be further defined as an activity linked to certain times of the

[25] *Id*., para. 2(a), (b).

[26] *Id*., para. 3.

[27] *Id*., para. 4.

[28] *Id*.

[29] *Id*. art. 5.

[30] *Id*. art. 6, para. 1.

[31] *Proposal for a Directive on the Conditions of Entry and Residence*, *supra* note 9.

[32] TFEU, *supra* note 2, art. 20, para. 1.

year either by an event or a pattern during which the labor requirements far exceeded "those necessary for usually ongoing operations."[33]

The Proposed Directive would extend to third-country nationals who reside outside the territory of the European Union and apply to be admitted to the territory of an EU Member to perform work as seasonal workers.[34] It would allow EU Members to apply more favorable conditions through bilateral agreements or multinational agreements with other EU Members or third countries.[35]

A. Recruitment and Sponsorship

The Proposed Directive would allow some flexibility by the EU Members when transposing the directive into national law to determine whether the employer or the third-country national must file the application. Third-country nationals could be admitted to a Member State if they presented

- a valid work contract or a binding job offer to work as a seasonal worker addressing working conditions, including the rate of pay and weekly or monthly working hours;
- a travel document issued pursuant to national law and valid at least for the same duration as the residence permit;
- proof of, or of having applied for, medical insurance; and
- proof of having adequate accommodations (if the seasonal worker must pay rent, it must not be disproportionate to his earnings).[36]

In addition to the above criteria, the proposal would require EU Members to determine that seasonal workers had enough resources to ensure that they did not become dependent on the social assistance system of the Member State concerned. Moreover, EU Members would have the right to deny admission to anyone deemed a threat to their public security or public health.[37]

B. Permit

Seasonal workers admitted for a period longer than three months would be given a permit, which would be required to indicate "seasonal worker" under the heading "type of permit."[38] The permit would be issued by the national competent authorities and this would be the only

---

[33] *Proposal for a Directive on the Conditions of Entry and Residence* art. 3(b), (c), *supra* note 9.

[34] *Id*. art. 2.

[35] *Id*. art. 4, para. 2.

[36] *Id*. art. 14.

[37] *Id*. art.7, para. 2(b).

[38] The format of the permit is established pursuant to Council Regulation (EC) No. 1030/2002 of 13 June 2002 Laying Down a Uniform Format for Residence Permits for Third-country Nationals, 2002 O.J. (L 157) 1, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:157:0001:0007:EN:PDF.

document issued to a seasonal worker.[39] They would be permitted to stay for up to six months in a calendar year and then required to return to their country of origin.[40]

C. Facilitation of Reentry

EU Members would have the option of issuing either three seasonal worker permits for three subsequent seasons based on a single administrative act or providing a facilitated procedure for seasonal workers who had already been admitted to that EU Member State and applied in the following year.[41]

D. Reasons to Refuse Admission

Pursuant to the Proposed Directive, EU Members would have the option of refusing admission if

- the admission criteria of article 5 (summarized above) were no longer being met and the applicant supplied fraudulent documents;
- an EU national or third-country national lawfully residing in the Member State concerned could do the job;
- the employer was penalized for hiring illegal workers or for undeclared work, pursuant to national law; or
- the number of applicants is too large for the Member concerned.[42]

E. Visas

The Proposed Directive would not require a visa for stays longer than three months. The language of article 10 indicates that seasonal workers would be given only one document—that of a seasonal worker permit. For periods of stay of less than three months, EU Members would be required to issue a visa allowing the seasonal worker to perform the specific activity.[43]

Visa requirements for short stays of less than three months and longer stays for more than three months are harmonized throughout the EU and apply to all third-country nationals who wish to enter the EU pursuant to Council Regulation (EC) No. 539/2001.[44] This Regulation harmonizes the visa conditions for third-country nationals who wish to enter the EU. As its title indicates, it

---

[39] *Id*. art. 10.

[40] *Id*. art. 11.

[41] *Id*. art. 12, para. 1.

[42] *Id*. art. 6.

[43] *Proposal for a Directive on the Conditions of Entry and Residence*, *supra* note 9, at 10.

[44] Council Regulation (EC) No. 539/2001 of 15 March 2001 Listing the Third Countries Whose Nationals Must Be in Possession of Visas When Crossing the External Borders and Those Whose Nationals Are Exempt from That Requirement, 2001 O.J. (L 81) 1, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:081:0001:0007:EN:PDF. This Regulation has been amended by Regulation (EC) 851/2005, Regulation (EC) 1932/2006, and Regulation 1211/2010.

contains a list of countries whose nationals must possess a visa when entering the EU and a list of countries whose nationals are exempt from the visa requirement.

F. Rights Accorded to Seasonal Workers

Seasonal workers would have the right to enter and stay, including free access to the entire territory in the EU Member State that issued the permit.[45] They would be entitled to the same working conditions, including pay, dismissal protections, and health and safety requirements that apply to workers in general, as provided in national law or in a collective agreement regarding seasonal workers.[46] Seasonal workers would also be accorded equal treatment consistent with the nationals of the recipient state and be granted the rights of

- freedom of association and membership in organizations representing workers,
- access to social security,
- access to a statutory pension based on previous employment on the same terms and conditions as nationals of the host state, and
- access to goods and services.[47]

[45] *Id*. art. 15.

[46] *Id*. art. 16, para 1.

[47] *Id*., para. 2.

EU-TURKEY ASSOCIATION AGREEMENT

Edith Palmer, Chief,
Foreign, Comparative, and International
Law Division II

SUMMARY An Association Agreement between Turkey and the former European Economic Community grants Turkish Nationals and their families who have lived and worked in a European Union (EU) Member State for one year the right to renew their residence permit if the same job is still available, and to renew their residence permit after three years of work in a Member State to find any kind of work. The Agreement is interpreted generously by the European Court of Justice and has contributed much to allowing Turkish immigrants to obtain permanent status in an EU Member State.

In their treatment of Turkish immigrants and their families, the Member States of the European Union (EU) are bound by an Association Agreement that the European Economic Community (EEC) signed with Turkey in 1963.[1] The Association Agreement with Turkey was one of many Association Agreements concluded with candidates for membership in the EEC. Many of these, however, are no longer relevant because the countries have since become members of the EU.[2] The Agreement with Turkey, however, has retained a certain importance because Turkey is not an EU Member State and because of the large number of Turkish immigrants in Europe.

Among other goals, the Association Agreement with Turkey intended to improve the situation of Turkish workers (then frequently called guest workers) in the Member States of the EEC, which has since become the EU. Articles 6(1) of the Agreement allows Turkish workers to extend their period of residence in an EU Member State, providing as follows:

> Article 6
>
> 1) Subject to Article 7 on free access to employment for members of his family, a Turkish worker duly registered as belonging to the labour force of a Member State:
>
> - Shall be entitled in that Member State, after one year's legal employment, to the renewal of his permit to work for the same employer, if a job is available;
> - Shall be entitled in that member State, after three years of legal employment and subject to the priority to be given to workers of Member States of the Community, to respond to another offer for employment, with an employer of his choice, made under normal conditions and registered with the employment services of the State, for the same occupation;
> - Shall enjoy free access in that Member State to any paid enjoyment of his choice, after four years of legal employment.

[1] Association Agreement with Turkey 3687/64, Sept. 12, 1963, 1964 JOURNAL OFICIEL DE LA COMMUNITÉ EUROPEENNE (217) 3687, *and* Additional Protocol to the Agreement, 1977 OFFICIAL JOURNAL OF THE EUROPEAN COMMUNITY [O.J.] (L 361) 1.

[2] GÜNTER RENNER, AUSLÄNDERRECHT IN DEUTSCHLAND 212 (1998).

Article 7 grants family members of the workers the following rights:

> Article 7
>
> The members of the family of a Turkish worker duly registered as belonging to the labour force of a Member State, who have been authorized to join him:
>
> - Shall be entitled – subject to the priority given to workers of Member States of the Community – to respond to any offer of employment after they have been legally resident for at least three years in that Member State;
> - Shall enjoy free access to any paid employment of their choice provided they have been legally resident there for at least five years.
>
> Children of Turkish workers who have completed a course of vocational training in the host country may respond to any offer of employment there, irrespective of the length of time they have been resident in that Member State, provided one of their parents has been legally employed in the Member State concerned for at least three years.

The Agreement was amended by agreement in 1972,[3] which commenced the process of allowing Turks in EU Member States the freedom of movement enjoyed by EU citizens. Some progress in the status of Turkish immigrants was also made in 1980 by Decision 80/1 of the Association Council established under the Agreement.[4]

The European Court of Justice has continuously held that the Decision 80/1 is an integral part of EU Law and insists on interpreting it for the Member States through preliminary rulings.[5] The Court generally interprets Decision 80/1 generously. Even though the Decision deals with the right to work of Turkish immigrants, the Court holds that this right to work in effect is a right to reside in the given Member State.[6]

Altogether, the Association Agreement, together with Decision 80/1, is interpreted as giving Turkish workers who have acquired rights under the Agreement the right to return to the Member State where they acquired such rights.[7] The Agreement does not give the right to enter an EU Member State. That issue is still governed by the laws of the individual Member States, which must comply with an EU framework. The Agreement, however, prevents the Member States from adopting more restrictive rules of entry for Turkish entrepreneurs and service providers than existed in 1973.[8]

---

[3] Council Regulation 2760/72, 1970 O.J. (L 293) 1.

[4] This decision is unpublished. It is described in judicial decisions and in the literature as Association Council Decision Number 1/80 and it expands the rights of movement and family reunion of Turkish immigrants. *See*, *e.g.*, Case C-329/97 (ECJ, Mar. 16, 2000), http://curia.europa.eu/juris/liste.jsf?language=en&jur=C,T,F&num=C-329/97&td=ALL.

[5] *Migration, Allgemeine Hinweise*, BUNDESMINISTERIUM DES INNEREN (May 2, 2002), http://www.migration-online.de/gesetz._cGlkPSZhbXA7X19wcmludD0xJmFtcDtpZD0yODk_.html.

[6] *Id.*, para. 1.5.1.

[7] 1 EU IMMIGRATION AND ASYLUM LAW 30 (Steve Peers et al. eds., 2012).

[8] *Id.*

INTERNATIONAL LABOUR ORGANIZATION

Luis Acosta
Senior Legal Information Analyst

SUMMARY The International Labour Organization's labor standards are often used by member countries as models in formulating labor policies. The ILO has adopted general conventions and recommendations that apply to all workers, as well as conventions and recommendations specifically focused on migrant workers. The ILO's most recent instrument addressing labor migration, the ILO Multilateral Framework on Labour Migration, sets forth nonbinding principles, guidelines, and best practices for policymaking in this area.

I. Introduction

The International Labour Organization (ILO) is the United Nations Specialized Agency responsible for establishing and overseeing international labor standards. Its labor standards are set forth in conventions, which are binding on party countries that ratify them, and in nonbinding recommendations and guidelines. The ILO lacks a direct means of enforcement of its conventions, and relies on consensus and persuasion to encourage compliance. While many ILO conventions have been ratified by only a limited number of countries, most countries are members of the ILO, and ILO member states often use ILO conventions and recommendations as broad guidelines for national policies.[1]

ILO conventions and recommendations generally apply to all workers, including migrant workers. Thus the ILO's 1998 Declaration on Fundamental Principles and Rights at Work requires all ILO member states to comply with certain basic rights for workers: freedom of association and recognition of the right to collectively bargain, the elimination of compulsory labor, the abolition of child labor, and the elimination of discrimination in employment.[2] These fundamental principles apply to all workers, including migrants.

Some ILO conventions and recommendations are particularly focused on migrant workers. These include ILO Convention 97, the Migration for Employment Convention (Revised 1949),[3] and its accompanying recommendation, the Migration for Employment Recommendation (Revised),[4] and ILO Convention 143, Migrant Workers (Supplementary Provisions) (1975),[5] and

[1] *How International Labour Standards Are Used*, ILO, http://www.ilo.org/global/standards/introduction-to-international-labour-standards/international-labour-standards-use/lang--en/index.htm (last visited Feb. 21, 2013).

[2] ILO, 1998 Declaration on Fundamental Principles and Rights at Work, http://www.ilo.org/dyn/normlex/en/f?p=1000:62:0::NO:62:P62_LIST_ENTRIE_ID:2453911:NO.

[3] ILO, Convention (No. 97) Concerning Migration for Employment (Revised), July 1, 1949, 120 U.N.T.S. 71, http://treaties.un.org/doc/Publication/UNTS/Volume%20120/volume-120-I-1616-English.pdf.

[4] ILO, Migration for Employment Recommendation (Revised), 1949 (No. 86), http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_ILO_CODE:R086.

its accompanying recommendation, the Migrant Workers Recommendation, 1975.[6] Convention 97 was adopted following World War II primarily to address labor migration in postwar Europe.[7] Forty-nine countries have ratified this Convention, including Brazil, Germany, Israel, Norway, Spain, and the United Kingdom.[8] Convention 143 sought to mitigate issues arising in the early 1970s involving irregular labor migration and the abuse of migrants in irregular status.[9] Twenty-three countries have ratified this Convention.[10]

In 1990 the United Nations adopted the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.[11] This Convention applies human rights principles to migrant workers and their families, including fundamental human rights, freedom from employment discrimination, the right to freely associate and collectively bargain, the right to receive emergency medical care, and the like.[12] Forty-six countries have ratified this Convention.[13]

A 1998 study of Conventions 97 and 143 by the ILO's Committee of Experts on the Application of Conventions and Recommendations found that the existing ILO conventions failed to adequately address the changed international context of labor migration. Among other things, the committee noted that the existing conventions were originally conceived with a view to covering migration for settlement rather than temporary migration.[14]

---

[5] ILO, Convention (No. 143) Concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers, June 24, 1975, 1120 U.N.T.S. 323, http://treaties.un.org/doc/Publication/UNTS/Volume%201120/volume-1120-I-17426-English.pdf.

[6] ILO, Migrant Workers Recommendation, 1975 (No. 151), http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312489:NO.

[7] INT'L LAB. OFFICE, INTERNATIONAL LABOUR MIGRATION: A RIGHTS-BASED APPROACH 128 (2010), http://www.ilo.org/public/english/protection/migrant/download/rights_based_approach.pdf.

[8] *Ratifications of C097 – Migration for Employment Convention (Revised), 1949 (No. 97)*, ILO, http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312242:NO (last visited Feb. 21, 2013).

[9] INT'L LAB. OFFICE, INTERNATIONAL LABOUR MIGRATION, *supra* note 7, at 129.

[10] *Ratifications of C143 – Migrant Workers (Supplemental Provisions) Convention, 1975 (No. 143)*, ILO, http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312288:NO (last visited Feb. 21, 2013). Of the countries discussed in this report, only Norway has ratified this Convention.

[11] International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Dec. 18, 1990, 2220 U.N.T.S. 3, http://treaties.un.org/doc/publication/UNTS/Volume%202220/v2220.pdf.

[12] INT'L LAB. OFFICE, INTERNATIONAL LABOUR MIGRATION, *supra* note 7, at 132–33.

[13] Status: International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, U.N. TREATY COLLECTION, http://treaties.un.org/Pages/ShowMTDSGDetails.aspx?src=UNTSONLINE&tabid=2&mtdsg_no=IV-13&chapter=4&lang=en#Participants (last visited Feb. 21, 2013). Of the countries discussed in this report, only Mexico has ratified this Convention.

[14] Int'l Lab. Conf., 87th Sess., June 1999, MIGRANT WORKERS: GENERAL SURVEY ON THE REPORTS OF THE MIGRATION FOR EMPLOYMENT CONVENTION (REVISED) NO. 97, AND RECOMMENDATION (REVISED) NO. 86, 1949, AND THE MIGRANT WORKERS (SUPPLEMENTARY PROVISIONS) CONVENTION NO. 143 AND RECOMMENDATION NO. 151, ¶ 659, http://www.ilo.org/public/libdoc/ilo/P/09661/09661%281999-87_1B%29.pdf; *see also* ¶¶ 14–16.

In response, the ILO adopted a new instrument in 2005, the ILO Multilateral Framework on Labour Migration: Non-Binding Principles and Guidelines for a Rights-Based Approach to Labour Migration.[15] The nonbinding Multilateral Framework "is intended to be a guide in the development, strengthening, implementation and evaluation of national, regional and international labour migration policies and practices for improving the governance, promotion and protection of migrant rights and promoting linkages between migration and development."[16] It consists of fifteen broad principles, and guidelines that may prove valuable in giving practical effect to the principles. In some instances it incorporates by reference other ILO conventions, including Conventions 97 and 143,[17] and ILO Convention 181, the Private Employment Agencies Convention, 1997.[18] It also incorporates by reference the UN Migrant Workers Convention.[19] In addition, Annex II to the Multilateral Framework sets forth examples of best practices that are consistent with the goal of furthering the broad principles.[20]

II. Eligibility for Admission of Temporary Workers

Principle 4 of the Multilateral Framework provides: "All States have the sovereign right to develop their own policies to manage labour migration. International labour standards and other international instruments, as well as guidelines, as appropriate, should play an important role to make these policies coherent, effective and fair."[21] The Multilateral Framework thus preserves the authority of nations to develop their own policies with respect to migration, including policies respecting the eligibility for admission of temporary workers. Guideline 4.1 calls for "formulating and implementing coherent, comprehensive, consistent and transparent policies to effectively manage labour migration."[22]

The compendium of best practices in Annex II of the Multilateral Framework describes several illustrative programs or practices by countries that allow temporary workers to be admitted,

---

[15] ILO MULTILATERAL FRAMEWORK ON LABOUR MIGRATION: NON-BINDING PRINCIPLES AND GUIDELINES FOR A RIGHTS-BASED APPROACH TO LABOUR MIGRATION (2006), http://www.ilo.org/public/english/protection/migrant/download/multilat_fwk_en.pdf.

[16] INT'L LAB. OFFICE, INTERNATIONAL LABOUR MIGRATION: A RIGHTS-BASED APPROACH 131 (2010), http://www.ilo.org/public/english/protection/migrant/download/rights_based_approach.pdf.

[17] ILO MULTILATERAL FRAMEWORK, *supra* note 15, princ. 9(b) ("In formulating national law and policies concerning the protection of migrant workers, governments should be guided by the underlying principles of [Conventions 97 and 143] and their accompanying Recommendations . . . , particularly those concerning equality of treatment between nationals and migrant workers . . . and minimum standards of protection.").

[18] *Id.*, princ. 13 (citing Int'l Lab. Org., Convention (No. 181) Concerning Private Employment Agencies, May 10, 2000, 2115 U.N.T.S. 249, *available at* http://treaties.un.org/doc/Publication/UNTS/Volume%202115/v2115.pdf, *and* ILO, Private Employment Agencies Recommendation, 1997 (No. 188), http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312526:NO).

[19] ILO MULTILATERAL FRAMEWORK, *supra* note 15, princ. 9(b) (citing International Convention on the Protection of the Rights of All Migrant Workers, *supra* note 11).

[20] *Id.* at 35–84.

[21] *Id.* at 11, princ. 4.

[22] *Id.*, para. 4.1

including Australia, Canada, Germany, and Spain.[23] For example, it mentions Germany's seasonal foreign worker program, in which migrant workers are admitted for up to ninety days if nationals are not available to work in industries such as agriculture, forestry, and hotels.[24]

III. Recruitment and Sponsorship

With respect to labor recruiters, Principle 13 of the Multilateral Framework states: "Governments in both origin and destination countries should give due consideration to licensing and supervising recruitment and placement services for migrant workers in accordance with the Private Employment Agencies Convention, 1997 (No. 181), and its Recommendation (No. 188)."[25] ILO Convention 181 provides for the licensing or certification of private employment agencies by member states. It requires member states to take steps to prevent abuse against persons placed in their territory by recruitment agencies, establish procedures to investigate complaints, and provide protection of workers' rights.[26]

Guidelines 13.1 through 13.8 in the Multilateral Framework suggest such measures as establishing standardized licensing and certification; requiring that migrant workers receive understandable and enforceable employment contracts; requiring recruitment services to avoid placing workers in jobs involving unacceptable hazards or abusive or discriminatory treatment; establishing protection systems such as insurance or bond arrangements to compensate migrant workers for monetary losses caused by recruitment agencies; and making sure that recruitment fees are not borne by migrant workers.[27]

With respect to policies requiring employer sponsorship as a prerequisite to admission of migrant workers, the Multilateral Framework appears to recognize such policies as legitimate means by which states may exercise their sovereign right to regulate migrant labor.[28]

IV. Visa Conditions

With respect to conditions on migrant workers' visas and related policies, such as the extent to which such workers' permitted stay is tied to the sponsoring employer, whether there is a path to permanent status, and the like, the Multilateral Framework preserves the prerogative of sovereign states to regulate, within the parameters of the fundamental principles of workers' rights, the conditions of employment migration.[29] The Multilateral Framework does not prescribe particular visa requirements or proscribe the use of caps or quotas.

---

[23] *Id.* at 52–55, paras. 40–45.

[24] *Id.* at 54, para. 43.

[25] *Id.* at 24, princ. 13.

[26] ILO, Convention (No. 181), *supra* note 18.

[27] ILO, ILO MULTILATERAL FRAMEWORK, *supra* note 15, at 24–25, paras. 13.1–13.8.

[28] *See*, *e.g.*, *id.* at 52, para. 40 (citing as a best practice Australia's policy in which employers sponsor temporary migrant workers to fill skilled positions that cannot otherwise be filled by Australia's labor force).

[29] *Id.* at 11, princ. 4.

Guideline 5.5 states that governments should "ensur[e] that temporary work schemes respond to established labor market needs, and that these schemes respect the principle of equal treatment between migrant and national workers, and that workers in temporary schemes enjoy the rights referred to in principles 8 and 9 of the Framework."[30] (Principle 8 concerns human rights, including those in the 1998 ILO Declaration of Fundamental Principles and Rights at Work.[31] Principle 9 concerns application of international labor standards to migrant workers.[32]) Guideline 9.7 provides that governments should "ensur[e] that restrictions on the rights of temporary migrant workers do not exceed relevant international standards."[33]

Within the best practices compendium, the Multilateral Framework notes as good examples that Australia allows temporary workers to apply for permanent residency[34] and that Canada allows temporary workers who lose their jobs through no fault of their own to remain to seek other employment.[35]

V. Admission Status of Family Members

The Multilateral Framework mentions family reunification efforts, but it does not promote family reunification for temporary migrant workers as an international standard. Principle 2 concerns international cooperation to promote managed employment migration;[36] within that principle, guideline 2.3 states that governments should pursue bilateral and multilateral agreements between destination and origin countries to address topics such as admission procedures, flows, and family reunification.[37] Principle 14 concerns social integration and inclusion,[38] and guideline 14.10 states that governments should "facilitat[e] the reunification of family members of migrant workers as far as possible, in accordance with national laws and practice."[39]

[30] *Id.* at 13, para. 5.5.

[31] *Id.* at 15, princ. 8.

[32] *Id.* at 16-17, princ. 9.

[33] *Id.* at 18, para. 9.7.

[34] *Id.* at 52, para. 40.

[35] *Id.* at 61, para. 61.

[36] *Id.* at 7, princ. 2.

[37] *Id.* at 7, para. 2.3.

[38] *Id.* at 27, princ. 14.

[39] *Id.* at 28, para. 14.10.

BIBLIOGRAPHY

OF SELECTED, RECENT, ENGLISH-LANGUAGE MATERIALS ON THE IMMIGRATION LAW OF FOREIGN JURISDICTIONS

Constance A. Johnson
Senior Legal Research Analyst

Works Covering Multiple Jurisdictions and International Law

Arnold, Peri E., ed. NATIONAL APPROACHES TO THE ADMINISTRATION OF INTERNATIONAL MIGRATION. 207 pp. Washington, DC: IOS Press, 2010. JV6035.N38 2010

Daway, P.R.P.S. *Migrant Workers' Rights and Status Under International Law: The Asian Experience*. 3 JOURNAL OF EAST ASIA AND INTERNATIONAL LAW. pp. 263-292. 2010.
Not in LC.
Available in Academic Search Complete (by subscription)

Freeman, Gary P. *National Models, Policy Types, and the Politics of Immigration in Liberal Democracies.* 29 WEST EUROPEAN POLITICS. pp. 227-247. 2006. JN94.A1W46

Gamlen, Alan & Katharine Marsh., eds. MIGRATION AND GLOBAL GOVERNANCE. 749 pp. Northampton, MA: Edward Elgar Publishing, 2011. JV6038.M536 2012

Iredale, Robyn. *Gender, Immigration Policies, and Accreditation: Valuing the Skills of Professional Women Migrants*. 36 GEOFORUM. pp. 155-166. Mar. 2005. G1.G28

O'Dowd, John. *"A Berlin Wall on Water?" Migration Control: Developments in the European Union Framework*. 21 REVUE EUROPÉENNE DE DROIT PUBLIC. pp. 137-160. 2009.
K21.E96

Opeskin, Brian, Richard Perruchoud, & Jillyanne Redpath-Cross, eds. FOUNDATIONS OF INTERNATIONAL MIGRATION LAW. 467 pp. New York: Cambridge University Press, 2012. K3275.F68 2012

Ruhs, Martin & Philp Martin. *Numbers vs. Rights: Trade-Offs and Guest Worker Programs*. 42 INTERNATIONAL MIGRATION REVIEW. pp. 249-265. Mar. 2008. JV6001.I55

Segal, Uma A., Doreen Elliott and Nazneen S. Mayadas, eds. IMMIGRATION WORLDWIDE: POLICIES, PRACTICES, AND TRENDS. 473 pp. New York: Oxford University Press, 2010.
JV6035.I465 2010

Zilbershats, Y. *Soverign States Control of Immigration: A Global Justice Perspective*. 1 ISRAEL LAW REVIEW. pp. 126-163. 2010.
K9.S72

African Jurisdictions

ANEBO, FELIX, et. al. LEGAL AND INSTITUTIONAL DIMENSIONS OF MIGRATION IN GHANA. 90 pp. Accra: Woeli Publising Services, 2010. JV9022.3.L44 2010

AWUMBILA, MARIAMA, et. al. MIGRATION AND MOBILITY IN GHANA: TRENDS, ISSUES, AND EMERGING RESEARCH GAPS. 102 pp. Accra: Woeli Publishing Services, 2011. In process at LC

NIGERIA'S VISA POLICY REVIEW: PROPOSED CHANGES TO ALIGN VISA POLICY WITH THE STRATEGIC GOALS OF VISION 20:2020 AND BEYOND. 20 pp. Abuja: Federal Ministry of Interior, Nigeria Immigration Service, 2010. KTA2144.N54 2010

Thomas, C. *Migrant Domestic Workers in Egypt: A Case Study of the Economic Family in Global Context*. 58 AMERICAN JOURNAL OF COMPARATIVE LAW. pp. 987-1022. 2010. K1.M439

American Jurisdictions

Macklin, Audrey. *Dancing Across Borders: "Exotic Dancers," Trafficking, and Canadian Immigration Policy*. 37 INTERNATIONAL MIGRATION. pp. 464-500. June 2003. JV6001.A1I5

Rekai, Peter. *US and Canadian Immigration Policies*. 171 THE BORDER PAPERS. 27 pp. Nov. 2002. http://www.cdhowe.org/pdf/temp/rekai.pdf

Asian and Pacific Jurisdictions

A GUIDE TO REFUGEE FAMILY REUNIFICATION IN NEW ZEALAND: ASSISTING REFUGEE FAMILIES THROUGH THE IMMIGRATION PROCESS. 124 pp. Wellington: Wellington Community Law Centre, 2011. HV640.4.N45G85 2011

Briskman, L. *Challenge and Collusion: Health Professional and Immigration Detention in Australia*. 14 INTERNATIONAL JOURNAL OF HUMAN RIGHTS. pp. 1092-1106. 2010. JC571.I593

CROCK, MARY & LAURIE BERG. IMMIGRATION, REFUGEES AND FORCED MIGRATION: LAW, POLICY AND PRACTICE IN AUSTRALIA. 698 pp. Annandale, N.S.W., Australia: Federation Press, 2011. KU2144.C764 2011

Haig, Ken. *Japanese Immigration Policy*. THE ROUTLEDGE HANDBOOK OF JAPANESE POLITICS. Pp. 223-235. New York: Routledge, 2011. JQ1631.R68 2011

JAYASURIYA, LAKSIRI. TRANSFORMING A "WHITE AUSTRALIA": ISSUES OF RACISM AND IMMIGRATION. 180 pp. New Delhi: SSS Publications, 2012. KU2100.J39 2012

LIU, GUOFU. CHINESE IMMIGRATION LAW. 223 pp. Burlington, VT: Ashgate, 2011. KNQ3023.L58 2011

MALHOTRA, ANIL & RANJIT MALHOTRA. INDIANS, NRIS & THE LAW. 452 pp. New Delhi: Universal Law Publishing Company, 2012. In process at LC

Tan, E.K.B. *Managing Female Foreign Domestic Workers in Singapore: Economic Pragmatism, Coercive Legal Regulation, or Human Rights?* 1 ISRAEL LAW REVIEW. pp. 99-125. 2010. K9.S72

European Jurisdictions

ANDRESEN, ENE & BERIT AAVIKSOO. MIGRATION LAW IN ESTONIA. 318 pp. Alphen aan den Rijn, The Netherlands: Kluwer Law International, 2012. K3275.A95 2012

BARNETT, HILAIRE & ROBERT JAGO. CONSTITUTIONAL AND ADMINISTRATIVE LAW. 879 pp. New York: Routledge, 2011. KD3989.B374 2011

Başkaracaoğlu, Elif & Umut Doğu. *Administration Without Frontiers? European Migration Law – Turkey*. 21 REVUE EUROPÉENNE DE DROIT PUBLIC. pp. 597-626. 2009. K21.E96

Beširević, Violeta & Aleksandra Čavoški. *Administration Without Frontiers? Serbian Migration Law and Policy from the European Perspective*. 21 REVUE EUROPÉENNE DE DROIT PUBLIC. pp. 461-503. 2009. K21.E96

BRADLEY, A.W. & K.D. EWING. CONSTITUTIONAL AND ADMINISTRATIVE LAW. 804 pp. New York: Pearson Longman, 2011. KD3930.W3 2011

Cardona, Tatjana & Andreas Lehner. *Austrian Migration Law*. 21 REVUE EUROPÉENNE DE DROIT PUBLIC. pp. 179-195. 2009. K21.E96

Cortese, Fulvio. *Administration Without Frontiers? European Migration Law – The Italian Legislation*. 21 REVUE EUROPÉENNE DE DROIT PUBLIC. pp. 273-312. 2009. K21.E96

Edelstam, Gunilla. *Administration Without Frontiers? European Migration Law – Sweden*. 21 REVUE EUROPÉENNE DE DROIT PUBLIC. pp. 581-596. 2009. K21.E96

Fidalgo de Freitas, *Portuguese Migration Law: A Constitutional and Administrative Overview.* 21 REVUE EUROPÉENNE DE DROIT PUBLIC. pp. 345-401. 2009. K21.E96

FISCHER, ROBERT. THE EUROPEANIZATION OF MIGRATION POLICY: THE SCHENGEN ACQUIS BETWEEN THE PRIORITIES OF LEGAL HARMONIZATION AND FRAGMENTATION. New York: Peter Land, 2012. 122 pp. JV7590.F55 2012

Florczak-Wątor, Monika. *Administration Without Frontiers? European Migration Law – Poland*. 21 REVUE EUROPÉENNE DE DROIT PUBLIC. pp. 313-343. 2009. K21.E96

Fridrich, Branislav & Lucia Mokrá. *Administration Without Frontiers? European Migration Law – Rights of Migrants in the Slovak Republic - 2008*. 21 REVUE EUROPÉENNE DE DROIT PUBLIC. pp. 505-540. 2009. K21.E96

Hailbronner, Kay, ed. EU IMMIGRATION AND ASYLUM LAW: COMMENTARY ON EU REGULATIONS AND DIRECTIVES. 1568 pp. Portland, OR: Hart Publishers, 2010. KJE6044.E98 2010

Kiseleva, Ekaterina. *Administration Without Frontiers? European Migration Law – Russia*. 21 REVUE EUROPÉENNE DE DROIT PUBLIC. pp. 441-460. 2009. K21.E96

LAGRAND, T. ERTUNA. IMMIGRATION LAW AND POLICY: THE EU ACQUIS AND ITS IMPACT ON THE TURKISH LEGAL ORDER. 306 pp. Rotterdam: Erasmus Universiteit Rotterdam, 2010. KKX3023.L34 2010 GLOBAL

Leskoviku, Migena. *Administration Without Frontiers? European Migration Law – Albania*. 21 REVUE EUROPÉENNE DE DROIT PUBLIC. pp. 163-177. 2009. K21.E96

Maes, M., et. al., eds. EXTERNAL DIMENSIONS OF EU MIGRATION AND ASYLUM LAW AND POLICY. 588 pp. Bruxelles: Bruylant, 2011. In process at LC

MAGLIVERAS, KONSTANTINOS D. MIGRATION LAW IN GREECE. 182 pp. Alphen aan den Rijn, The Netherlands: Kluwer Law International, 2011. KKE3025.M34 2011 GLOBAL

Mahroum, Sami. *Europe and the Immigration of Highly Skilled Labour*. 39 INTERNATIONAL MIGRATION. pp. 27-43. Special issue, 2001. JV6001.A1I5

MAMUKASHVILI, SHORENA. *Administration Without Frontiers? European Migration Law – Georgia*. 21 REVUE EUROPÉENNE DE DROIT PUBLIC. pp. 231-252. 2009. K21.E96

Matei, Ani & Madalina Cocosatu. *Administration Without Frontiers? European Migration Law – Romania*. 21 REVUE EUROPÉENNE DE DROIT PUBLIC. pp. 403-439. 2009. K21.E96

Moya, David. *Administration Without Frontiers? European Migration Law and Spanish Practice*. 21 REVUE EUROPÉENNE DE DROIT PUBLIC. pp. 541-580. 2009. K21.E96

NYKAANEN, EEVA, et. al. MIGRATION LAW IN FINLAND. 162 pp. Alphen aan den Rijn, The Netherlands: Kluwer Law International, 2011. KJT3023.M54 2011

Orgad, L. *Illiberal Liberalism: Cultural Restrictions on Migration and Access to Citizenship in Europe*. 58 AMERICAN JOURNAL OF COMPARATIVE LAW. pp. 53-105. 2010. K1.M439

PEERS, STEVE. EU JUSTICE AND HOME AFFAIRS LAW. 983 pp. Oxford, U.K.: Oxford University Press, 2012. KJE5977.P44 2012

Peers, Steve, Elspeth Guild, and Jonathan Tomkin, eds. EU IMMIGRATION AND ASYLUM LAW: (TEXT AND COMMENTARY). 2 vol. Boston: Martinus Nighoff Publishers, 2012. KJE6044.E98 2012

PHELAN, MARGARET & JAMES GILLESPIE. IMMIGRATION LAW HANDBOOK. 1486 pp. New York: Oxford University Press, 2010. KD4134.A3 2010

Pomahač, Richard. *Administration Without Frontiers? European Migration Law – Czech Republic*. 21 REVUE EUROPÉENNE DE DROIT PUBLIC. pp. 223-230. 2009. K21.E96

SGALAMIB, NEZNA KOGOVSMEK. MIGRATION LAW IN SLOVENIA. 244 pp. Alphen aan den Rijn, The Netherlands: Kluwer Law International, 2011. KKS6302.5.S25 2011 GLOBAL

Stadtműller, Elżabieta & Klaus Bachmann, eds. THE EU'S SHIFTING BORDERS: THEORETICAL APPROACHES AND POLICY IMPLICATIONS IN THE NEW NEIGHBOURHOOD. 261 pp. New York: Routledge, 2012. JZ1570.A5E9745 2012

Stefanov, Rumen & Georgi Michev. *Adminstration Without Frontiers? Euorpean Migration Law – Bulgaria*. 21 REVUE EUROPÉENNE DE DROIT PUBLIC. pp. 197-221. 2009. K21.E96

SYMES, MARK & PETER JORRO. ASYLUM LAW AND PRACTICE. 1144 pp. Haywards Heath, West Sussex: Bloomsbury Professional, 2010. KD4142.S96 2010

Thym, Daniel. *Administration Without Frontiers? European Migration Law – Germany*. 21 REVUE EUROPÉENNE DE DROIT PUBLIC. pp. 253-272. 2009. K21.E96

TÓTH, JUDIT. MIGRATION LAW IN HUNGARY. 248 pp. Alphen aan den Rijn, The Netherlands: Klower Law International, 2012. KKF3023.T68 2012

WIESBROCK, ANJA. LEGAL MIGRATION TO THE EUROPEAN UNION. Boston: Martinus Nijhoff Publishers, 2010. 809 pp. KJE5170.W54 2010

WRAY, HELENA. REGULATING MARRIAGE MIGRATION IN THE UK: A STRANGER IN THE HOME. 274 pp. Burlington, VT: Ashgate, 2011. KD4134.W73 2011