

HR Law Hotline

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INDIA RESTRICTS ISSUANCE OF EMPLOYMENT VISAS TO FOREIGNERS

In support of the Indian government's recent policy to restrict entry of foreign nationals for employment in India, the Ministry of Labour and Employment and Training ("MLET") has issued new guidelines¹ for grant of employment visas ("E-Visa"). As a result, ceilings have been introduced on issuance of E-Visas to foreign nationals.

Indian Missions abroad shall no longer issue E-Visas to foreigners constituting more than 1% of total number of workers working on the project, with a minimum of five (5) and a maximum of twenty (20). Further, E-Visas shall be issued only in the event the foreigner is a skilled and qualified professional, technical expert, senior executive or in a managerial position, and workers with such skills are not available in India. Issuance of E-Visas to foreigners who are either unskilled or semi-skilled workers may be prohibited as a result of the new guidelines.

Certain relaxations have however been made for companies engaged in the power and steel sector, which are employing more than the prescribed number of foreign nationals. Further, the government (through the Ministry of Labour and Employment) may consider a need for additional foreign talent in large projects, on a case by case basis, upon receiving specific applications.

Indian Missions abroad shall henceforth be required to submit to the government, details of the E-Visas issued by them for each project giving details of the project involved and the details of the visa applicant. This would help the government ensure that E-Visas are not being issued for skills which are available in the country, besides keeping a track of the total number of foreign workers engaged on various projects.

In order to promote domestic skill sets, Indian companies have also been encouraged to conduct training programmes for Indians in the same skill or area for which E-Visas have been issued to foreign nationals. Indian companies are also allowed to utilize the upgradation and modernization schemes being run by Industrial Training Institutes to train their workers and thereby reduce their dependence on foreign workers.

ANALYSIS

The visa restrictions, government's close monitoring and recent developments in relation to the changes to the social security legislation (which mandates foreigners employed in India to contribute social security in India), will make it more difficult for Indian companies to attract foreign talent.

A couple of decades ago, the Indian government was highly concerned about the 'brain-drain' from India and being a labour-surplus country, India was always known to export workers abroad. India has traditionally been in favour of liberal rules for immigration. In view of the global financial crisis and India's impressive economic growth, India has been attracting foreign talent into the country. However, the recent past seems to have been a paradigm shift in the government's view as it has been discouraging Indian companies from employing foreigners, by adopting policy restrictions. One factor could be the government's concern due to the presence of a large number of Chinese workers (including unskilled and semi-skilled workers) in certain industries.

It may be noted that the policy for issuance of Indian visa has witnessed significant developments recently. In August 2009, the Ministry of Commerce and Industry had stated that Business Visa ("B-Visa") cannot be issued to foreign nationals coming for executing projects / contracts in India. Pursuant to this, foreign nationals already in India holding B-Visa and involved in project work, were required to return to their home countries on the earlier of the expiry of their visa or by October 31, 2009. Such foreign nationals were required to obtain an E-Visa from their country of origin if they wish to re-enter India. In October 2009, the Ministry of Home Affairs issued a note on the frequently asked questions, outlining the situations / instances in which a B-Visa or E-Visa may be issued by the Indian Missions abroad. Through these steps, the government tried to bring in more clarity in terms of issuance of the visas.

Thanks to the efforts of NASSCOM, recent news reports suggest that the government may relax its policy on B-Visa for the Indian information technology (IT) sector. This is in view of the fact that the IT sector is highly people oriented and imposing such restrictions on foreign nationals may affect this industry's growth opportunities.

- Ajay Singh Solanki & Vikram Shroff

¹ Vide notification no. DGE&T-M-26025/4/2009-MP (G) dated December 22, 2009

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