Issue 1, February 2020

ABA Section of International Law
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EUROPE UPDATE

BUSINESS VISAS IN EUROPE AND THE UNITED STATES

Message from the Europe Committee and the Immigration Committee

The Europe Committee and the Immigration Committee are happy to present our joint Newsletter on Business Visas in Europe and the United States. We would like to thank Editor Jörg Rehder and the many Committee members who have contributed articles to this issue.

We welcome all Committee members who are interested in serving as guest editors to organize a future newsletter on a topic important to the American Bar Association.

This Spring the Section will hold its Annual Conference at the New York Marriott Downtown in New York City from April 21-24, 2020. We encourage all Committee members, and those aspiring to a Committee leadership position or Section leadership position, to attend.

Finally, don't forget to join the Europe Committee on its monthly calls on the first Tuesday of every month.

A Note from the Editor

In today's world it seems that people are often „citizens" of a corporation rather than of a country, meaning they often have closer ties to their employer than to a particular country. For example, an employee working at Microsoft's headquarters in Redmond, Washington may eventually be transferred to Microsoft's facilities in Italy, Germany, and Sweden before returning to the United States. Though each of these Microsoft facilities is in the European Union, odds are that the employee will separately need to obtain a work permit in each jurisdiction. Always from the perspective of a US citizen, attorneys from twelve different European countries discuss in this *Business Visas in Europe and the United States* Newsletter how American business people can obtain a work permit in various European jurisdictions. Important to note is that US citizens have an advantage over citizens of many other countries in that often they may enter a European country without a work permit in hand – as long as they do not start working until having actually received a work permit. We also discuss in this Newsletter various US work permits available to citizens of European countries, and the procedure to obtain these work permits. We hope you find this information useful for your next business travels!

Jörg Rehder
(Schiedermair Rechtsanwälte - Frankfurt, Germany)

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About the Europe Committee

The Europe Committee seeks to engage lawyers conducting practices that touch Europe, including the various European countries, the European Union, and the institutions of the Council of Europe. It nurtures a community of lawyers sophisticated in cross-border matters, comparative law, and the continuously emerging transnational law of Europe, public and private. The Europe Committee's activities include the sponsorship of programs at the Section of International Law's seasonal meetings, hot topics teleconferences and newsletter presentations by experts on emerging developments of European law, exploration of legal policy and law reform topics, contributions to the Year in Review issue of The International Lawyer, and co-sponsorship of Section of International Law stand alone and other programming.

The Europe Committee's membership is its most important asset. We encourage all Committee members to be involved in Committee activities and to communicate their suggestions and ideas.

Upcoming Events

The following are highlights of some of the upcoming Section and Association events:

2020 Americas Conference: Reimagining Corporate Social Responsibility
11-13 March 2020
San José, Costa Rica
The International Law Section is bringing its Americas Conference to Costa Rica for the first time. Lawyers from around the world will convene to discuss and reimagine the future of Corporate Social Responsibility (CSR) in practical terms. Over the course of two days, industry experts including in-house counsel, business leaders, and private practitioners, will discuss the latest trends and developments regarding ethical business practices and groundbreaking CSR issues, including their view of what next generation CSR should look like. Register at **www.ambar.org/americasconf2020**

2020 Section of International Law Annual Conference: Empowerment
21-24 April 2020
New York Marriott Downtown
New York, New York
At this year's Section Annual Conference, hosted in New York City, you can network with hundreds of Section members and make connections with new colleagues; attend captivating, informative and spectacular CLE Showcase Programs; participate in engaging seminars; build and expand your legal career / practice; enjoy and be entertained at a number of receptions and events in the Big Apple.

2020 EMEA Conference: Law, Technology & Innovation
17-19 June 2020
Dublin, Ireland
Join the International Law Section at its Technology & Innovation European Conference in Dublin, Ireland. Lawyers and technology experts will discuss how technology will impact your practice and what the future holds in the world of legal tech. Speakers at the conference – including many in-house counsel and business leaders -- will also discuss the latest trends in data security and artificial intelligence. All of this takes place in the exciting city of Dublin, Ireland, known for its literature, beautiful walks, interesting breakfasts, and an occasional pint (or whiskey) with an excellent music scene!

ABA Annual Meeting
29 July - 4 August 2020
Chicago, Illinois
Please join us for the annual meeting the American Bar Association as a whole, in the exciting venue of Chicago. Further details forthcoming.

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Working in Austria as a US Citizen

By Georg Knafl – Wolf Theiss (Vienna, Austria) at georg.knafl@wolftheiss.com

Austria provides for more liberal immigration laws for EU/EEA citizens than it does for citizens of other countries, including for US citizens. US citizens wishing to work in Austria must obtain approval to reside and work in Austria. The starting point for such an application is either the Austrian Embassy in Washington, DC or an Austrian Consulate in the United States.

To obtain the requisite approval, the applicant must apply in person and provide complete and proper documentation (i.e., documents must be submitted in original and certified translations into German may also be required). The applicant must also pay a fee. Failure to observe these rather rigid requirements will cause the application to be denied or, at a minimum, to be delayed. It is advisable to compile complete and proper documentation early in the planning phase.

We now turn to the various types of approvals that are available to US citizens. The various approvals differ from one another in terms of their duration of stay (permanent or temporary), the applicant's qualifications, and the type of work the applicant is considering. The type of permit an applicant should seek depends on the characteristics of the applicant as well as the circumstances of the intended stay in Austria. A good starting point for more information on this in English is the website of the Austrian Federal Government at www.migration.gv.at/en.

While each situation will be unique, the following discusses various scenarios businesspeople may encounter when contemplating a stay in Austria: (i) temporary work in Austria with a visa; (ii) temporary work stay in Austria, and (iii) permanent business-related immigration to Austria.

Temporary Work in Austria with a Visa

Assuming the applicant satisfies all requirements, visas may be granted for up to six months either to be self-employed or to be an employee in Austria. Applications can be processed as of three months prior to entering Austria and should be submitted no later than at least three weeks prior to the date of arrival in Austria.

Obtaining a permit for temporary employment is subject to the approval of the Austrian Public Employment Service (AMS). The AMS will generally issue such an approval only if, after reviewing Austria's general labor market, it concludes that the temporary employment at issue will not adversely impact Austria's "important public or macroeconomic interests." Accordingly, it is recommended to contact this Agency early as the applicant will need to submit also this Agency's approval together with the visa application.

Temporary Work Stay in Austria

If US citizens intend to stay in Austria for longer than six months, they may obtain a fixed-term permit (not to exceed one year) for specific work-related purposes. These purposes are set forth by statute and include: (i) intra-company transfers (i.e., for managers, specialists, or trainee employees who are employed temporarily by an Austrian branch of a US-affiliated company or group of companies), (ii) for employees who are sent to Austria to perform a specific assignment or are hired out to an Austrian company, (iii) self-employed persons (to perform certain services and the contract covers a period of more than six months), and (iv) other specific cases of employment as set forth by law (e.g., au-pairs).

On top of satisfying statutory application requirements, applicants must satisfy additional general requirements, such as having adequate financial means to reside in Austria (fixed and regular income to cover living costs so as to avoid going on welfare), health insurance coverage that is recognized in Austria, adequate accommodations, and not being considered to be a threat to Austria's public order or national security.

In practice, obtaining the required permit approving the applicant's entry into the Austrian labor market (to the extent required by the specific work-related purpose) is more of a hurdle than it is to obtain a temporary residence permit. For this reason, it is advisable to contact the AMS early in the application process also for this type of permit.

Permanent Business-Related Immigration to Austria

US citizens wishing to immigrate to Austria permanently for work-related reasons will generally not face an easy procedure. Obtaining permanent residency with unrestricted access to the Austrian labor market ("Permanent Residence EU") is subject

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to various legal requirements, e.g., advanced German language skills – B1 level and residence in Austria for a minimum of five years. Therefore, prior to immigrating to Austria permanently, one must have resided in Austria on a fixed-term residency permit for the period set forth therein and also otherwise be eligible for permanent residence. Not all permits allowing for a fixed-term stay in Austria, however, are eligible to satisfy the time requirement of five years. Accordingly, it is difficult to transfer from only temporary work stays in Austria to permanent immigration to Austria.

Applicants are eligible for a fixed-term residence permit only if they fall within one of the following categories (i) key workers for the Austrian labor market (e.g., highly-qualified, skilled individuals in professions experiencing workforce shortages), (ii) graduates of Austrian universities, (iii) self-employed key workers, or (iv) start-up entrepreneurs. Whether somebody actually belongs to one of these groups depends on how many "points" are allotted to an individual (e.g., for education, professional experience, age, language skills). Whether an applicant has sufficient points can be determined on a non-binding basis by calculating the points allotted using a formula provided by the Austrian Federal Government under www.migration.gv.at/en/service-and-links/points-calculator/.

The applicant must also satisfy the same general requirements as set forth for a temporary work stay in Austria (see above). In practice, this means that an applicant's eligibility for fixed-term residency will depend either on the applicant (i) already having a job offer in Austria, or (ii) having sufficient funds available to be self-employed or to establish a start-up entity. Finally, like in nearly all EU member states, US citizens may enter Austria for up to six months on a "job seeker" visa to look for a suitable position.

If, after a thorough investigation by the authorities, the applicant is eligible for a Permanent Residence EU, a Red-White-Red Card (*Rot-Weiss-Rot–Karte*) will be issued for a period of 24 months. (The colors of the Austrian flag are red, white, red; thus the name of the card.) It entitles the holder to a fixed-term residency in Austria, and is generally restricted to employment with the particular employer or for the pursuit of self-employment as set forth in the application. For a US citizen to have unrestricted access to the Austrian labor market, the citizen must hold a Red-White-Red Card plus (*Rot-Weiss-Rot – Karte plus*). It can be issued as a renewal of the Red-White-Red Card (after 24 months) as long as the holder satisfies also the specific requirements for the issuance of a Red-White-Red Card plus.

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The Entry of US Citizen Managers into the Czech Labor Market

By Nikola Hamáčková and Jiří Neubauer – DRV Legal (Brno, Czech Republic) at hamackova@drvlegal.cz and neubauer@drvlegal.cz, respectively

Citizens of the United States constitute Third Country Nationals[1] with respect to Czech immigration laws and, as a result, they are not granted free access to the Czech labor market. This article will discuss some of the fundamental conditions a US citizen must satisfy to be able to work in the Czech Republic legally.

The employment of foreign nationals in the Czech Republic is governed primarily by the Act on Employment[2], while the entry and stay of foreigners is governed by the Act on Stay of Foreign Nationals[3]. The Act on Employment provides that foreign nationals may be employed in the Czech Republic as long as they have been granted a work permit and residence permit, an employment card, a blue card, or a card of an employee subject to an intra-company transfer. The last three listed cards constitute permits that allow for long-term stays in the Czech Republic. These cards also permit the holder to be employed in the Czech Republic.

In fact, each of these cards allows a foreigner not only to reside in the Czech Republic for longer than three months, but also to be employed without having to undertake the additional step of applying for additional permits with various administrative agencies, e.g., the Czech Ministry of Interior (to issue a residence permit) or the respective regional Czech Labor Office (to issue a work permit). A US citizen may submit the application for the above-mentioned cards to the Embassy of the Czech Republic in Washington, DC.

Work Permit

The "work permit" is used most commonly for short-term employment (stays for up to 90 days), summer jobs, and temporary seasonal jobs.[4] It does not, unlike the other two cards, permit the foreigner to simultaneously reside in the Czech Republic. This permit is suitable for US nationals who wish to work in the Czech Republic for up to 90 days within a 180-day period.[5] An application must be submitted to the relevant regional branch of the Czech Labor Office prior to entering the Czech Republic; the application must be submitted either by the foreign national or via the prospective employer. The application must evidence that the foreign national is qualified for the open position and include the employment agreement (or an employment agreement for the future).

Because the work permit does not simultaneously serve as a permit to stay in the Czech Republic, US nationals need to obtain a separate residence permit so that they can complete their employment duties. The short-term (Schengen) visa is sufficient for such short term stays for US nationals. A long-term stay requires a national long-term visa or a residence permit issued by the respective administrative Czech authority.

We should note that US citizens are not required to apply for a visa for stays for up to 90 days in Schengen countries (including the Czech Republic); this applies, however, only if no income is earned during this period.

Employment Card

The employment card allows the holder to reside in the Czech Republic for a long-term stay (i.e., for longer than three months) and to be engaged in the gainful employment for which the card had been issued.

The Czech Ministry of Interior issues the employment card, typically for the duration of the employment relationship, whereby the maximum period is two years. The card may be extended repeatedly.

The time to process an employment card application is usually two to three months. A US citizen will typically submit the application to the Embassy of the Czech Republic in Washington, DC. The application must include documents establishing the completed education, the qualification for the position, and an employment agreement (or an employment agreement that is to commence in the future). If the application is granted, the US citizen is granted a visa enabling him to stay in the Czech Republic for up to 90 days so as to obtain the employment card. A US citizen who enters the Czech Republic must register with the local branch of the Czech Ministry of Interior[6] within three working days of arriving, and provide his biometric data to the relevant branch of the Czech Ministry of Interior.

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If the US citizen satisfies all of the above conditions, he may begin working for the respective employer in the Czech Republic. The employment card may be used for all types of employment, regardless of the qualification or expertise needed for a particular position.

The employmenr card is, however, issued only for a specific position registered with the national register of job vacancies available to foreign nationals (this applies also to the employment permit and the blue card). The national registry is maintained by the Czech Ministry of Labor and Social Affairs.[7] The relevant job vacancies may be searched at the website of the Czech Ministry of Labor and Social Affairs.

Blue Card

The blue card is for long-term stays permitting the holder to stay in the Czech Republic for longer than three months and to engage in employment requiring a professional qualification. Professional qualification means that a university degree or higher specialized education for longer than three years has been obtained. The Czech Ministry of Interior is responsible for issuing the blue card. The card is valid for three months longer than the period for which the employment agreement has been concluded; in the aggregate, however, the card is not to be valid for more than two years. Just like the employment card (see above), the blue card may be renewed repeatedly.

Though the procedure to obtain a blue card is similar to the procedure for obtaining an employment card, there are differences with respect to the conditions that must be met and the documents that must be submitted. For example, the US citizen must submit an employment agreement for at least one year for the performance of a position that requires a professional qualification and for such a period that qualifies as a full-time position (on a weekly basis) as set forth by Czech law. Also, the employment agreement must set forth the gross salary (either monthly or annual), which must be at least 1.5 times the annual gross wage set forth by the Czech Ministry of Labor and Social Affairs.

The Employment card, blue card and an intra-company transfer card are generally the most suitable types of permits for US citizens who wish to work in the Czech Republic, in particular if the position at issue is a managerial or comparable position

Intra-Company Transfer Card

An intra-company transfer card is a permit for a long-term stay that allows US citizens to reside in the Czech Republic for at least three months and to engage in gainful employment (either as a manager, a specialist, or as a trainee) at the entity to which the US citizen has been transferred. It is issued for the period of the transfer, though it may not exceed three years for a manager or a specialist and one year for a trainee. The card may be renewed repeatedly.

The application process is similar to the process for obtaining an employment card or a blue card, although the conditions to be met as well as the documents to be submitted are different. Different than from an employment card and a blue card, an employer is not required to first seek a Czech or citizen of an EU member state to fill the position; instead, the employer may offer the position directly to a US citizen.

Which Permit is the Most Appropriate?

Each of the above-discussed types of employment permit and resident permit require certain documents to be submitted, depending on the permit sought. In addition to the actual application, general travel documents, an employment agreement (or a future employment agreement), an employer's letter of appointment or a letter of transfer, and documentation establishing that health insurance has been obtained must also be submitted. Any documentation in English (or any other foreign language) must be submitted both in its original wording as well as in Czech via a certified translation. Failure to submit the necessary documents will undoubtedly result in a rejection of the application.

The employment card, blue card, and an intra-company transfer card are generally the most suitable types of permits for US citizens who wish to work in the Czech Republic, in particular if the position at issue is a managerial or comparable position.

Because each of these permits (i.e. employment card, blue card and intra-company transfer card) is of a dual nature, they are the most convenient and fastest method of obtaining a

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relevant permit for the lawful employment of US citizens in the Czech Republic. The introduction of the employment card, blue card, and an intra-company transfer card simplified the procedure for lawfully employing US citizens. It still needs to be considered, however, that for a successful issuance of any of these permits, a slew of requirements need to be satisfied. The time necessary to satisfy the conditions may very well extend beyond the time anticipated by the US citizen. US citizens should never forget this when seeking to work in the Czech Republic.

[1] *Third country national is a national of a country other than of an EU member state, Iceland, Liechtenstein, Norway, or Switzerland*

[2] *Law No. 435/2004 Coll,. on Employment, as amended*

[3] *Law No. 326/1999 Coll,. on Stay of Foreign Nationals, as amended*

[4] *Work related stays are for a maximum of six months*

[5] *A short term stay is understood to be a stay for up to 90 days within any 180-day period immediately preceding each of those stays (note: the length of each stay is determined based on the entry and exit stamps marked at the border crossings in the relevant travel document.)*

[6] *For a list of the relevant branches of the Czech Ministry of Interior, see https://www.mvcr.cz/clanek/sluzby-pro-verejnost-informace-pro-cizince-kontakty.aspx*

[7] *See https://portal.mpsv.cz/sz/zahr_zam/prociz/vmciz*

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Visa Issues Regarding the Transfer of Personnel from US Corporations to Germany

By Mona Baron – Schiedermair Rechtsanwälte (Frankfurt, Germany) at baron@schiedermair.com

Globalization causes many companies to operate in more than just one country, or even in more than one continent, at any one time. In particular during the start-up phase of a foreign affiliate, it is often important for a corporation to transfer its know-how and experience from its headquarters to the foreign subsidiary by transferring personnel. As a result, employers expect employees to be increasingly mobile and flexible. This article briefly discusses visa issues US corporations may face when seeking to transfer personnel to Germany.

Transferring Personnel from a US Corporation to Germany

People who wish to work in Germany and who are citizens of countries that are not members of the European Union (EU) or the European Economic Area (EEA) -- such as US citizens -- require a residence permit to enter and stay in Germany. Access to the German labor market is governed by the Act on the Residence, Employment, and Integration of Foreigners (Residence Act) and by the Regulation on the Employment of Foreign Nationals (Employment Regulation). Specifically, Section 18 of the Residence Act governs residence in Germany by foreigners who will engage in gainful employment. Such employment is subject to approval by Germany's Federal Employment Agency (FEA). Assuming the FEA approves a US citizen's employment in Germany, the local Aliens Department will issue both the work permit and the mandatory residence permit. This approval is obtained via an internal procedure, meaning the two agencies coordinate the issuance of the permits with one another.

Depending on the situation, a residence permit may be issued to a US citizen for the purpose of employment without the FEA's consent. This applies to highly-qualified people who hold a settlement permit, graduates of German universities who have employment corresponding to their degree, senior executives to whom the company has issued a general or commercial power of attorney to serve as a legal representative of the company, teachers, research assistants, graduates of German schools abroad who have employment corresponding to their degree, or foreign nationals who hold an EU Blue Card or a residence permit and who have been legally employed in Germany for two years or who have been residing in Germany continuously for three years.

Applying for a Visa

US citizens who wish to take up employment in Germany, and who will be entering Germany for the first time, must apply for a visa at the Germany Embassy in Washington, DC or at a German Consulate in the United States prior to entering Germany. Like in nearly all EU member states, however, US citizens may enter Germany for up to 90 days to look for work.

If a US citizen already entered and is staying in Germany legally, he may apply for a residence permit for the purpose of employment directly with the local Aliens Department. Local jurisdiction is determined by the actual or intended place of residence of the US citizen. It is important that the applicant give sufficient time for the processing of the application. To avoid follow-up questions from the Embassy, the applicant should submit all information completely and, to the extent applicable, with a certified translation into German. The documentation typically includes the passport and, if the applicant's place of current residence is not his home country, a valid residence permit. The visa should be applied for as soon as possible prior to the intended start date for employment as the procedure often takes a number of months (in some cases a preliminary examination procedure may be initiated).

Approval from the Federal Employment Agency (FEA)

Access to the German labor market is generally possible for US citizens only if no German or other "preferred foreign employees" (generally citizens of an EU or EEA country) are available for the open position. Prior approval from the FEA is necessary for the Aliens Department to issue a residence permit for an employee from the United States.

Due to the shortage of skilled workers in Germany, the Federal Ministry of Labor and Social Affairs has made it easier for skilled workers with an academic degree to work in Germany. Employers can quite easily check whether a

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potential employee will be allowed to work in Germany by reviewing the FEA's website at https://www.arbeitsagentur.de/fuer-menschen-aus-dem-ausland/migration-check-english.

The FEA may, however, impose any number of restrictions on the approval in terms of length, the business, the professional activity, the employer, and the position and distribution of working time. Approvals are granted for up to three years; they are, however, subject to revocation if it is determined that the US citizen has been employed on less favorable terms than comparable German employees or if there are grounds for refusal under Section 40 Residence Act (e.g., the employment relationship was established on the basis of an unauthorized placement or recruitment or if the US citizen intended to work in Germany only as a temporary employee).

Administrative Offense

US citizens who work in Germany without the mandatory residence permit are guilty of an administrative offense and, thus, may be fined. The same applies to employers who employ US citizens without the requisite permit.

Granting a Residence Permit without the Federal Employment Agency's Approval

The following situations may allow for a residence permit to be issued without the FEA's approval (this is not an exhaustive list):

- Business travellers who are employed in the United States and are entering Germany to work temporarily at their affiliated German entity, as long as they do not stay in Germany for more than 90 days within a 180-day period;

- Business travellers who are employed in the United States and are entering Germany to participate in meetings or negotiations, as long as they do not stay in Germany for more than 90 days within a 180-day period;

- Skilled workers who are employed in the United States by an internationally operating group or company for the purpose of continuing on-the-job training at the German affiliate for up to 90 days within a period of twelve months; and

- Journalists accredited by the German Press and Information Office who are not employed by a foreign employer and who will not work in Germany for a foreign employer for more than 90 days within a period of twelve months.

Such exemptions from approval do, however, require the employer to notify the FEA of the employment prior to the individual actually commencing with his activities. A form for this purpose is available at http://www.arbeitsagentur.de/arbeitsmarktzulassung. Unfortunately, the FEA makes this form available only in German.

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Requirements for US Citizens to Relocate And Work In Greece

By Steven N. Kourtis and Katerina Chrysou - Fortsakis, Diakopoulos, Mylonogiannis (Athens, Greece) at skourtis@fdmalaw.com and kchrysou@fdmalaw.com, respectively

US citizens do not need a visa to stay and engage in business (e.g., attend conferences, participate in meetings, etc.) in Greece as long as this does not exceed 90 days. The only requirement is that the US citizen have a valid passport (or other valid travel document) for at least three months beyond the intended day of departure (although the US Embassy in Greece advises US citizens to have a passport valid for at least six months beyond the date of departure).

Visits Beyond 90 Days

If a US citizen wishes to stay in Greece for longer than 90 days, he must visit an Aliens Bureau in Greece at least two weeks prior to the end of the 90-day period to explain why and submit written evidence as to the reasons for the intended extension.

Visit for Longer than 90 Days within a 180-Day Period – Employment in Greece

Under Greek law, US citizens are required to obtain a visa and residence permit for employment and for professional reasons (reasons connected to their employment). The most important aspect of the entire procedure is for the US citizen to secure a position with a Greek employer who is willing to sponsor the visa and the employment permit. For this, the employer must submit documentation to the "Manpower Employment Agency" (OAED) and the Greek Ministry of Interior evidencing that there are no Greek or EU citizens available for the open position. If the employer's application is approved, the documents are forwarded to the nearest Greek Consulate in the United States where the US citizen resides. The US applicant will subsequently be invited for an interview and, if approved by the consular official, the Consulate will issue a residence and work visa approval. If relevant, and as long as certain income thresholds are met, the Consulate will also issue residency permits to the US citizen's immediate family.

Once the US citizen (and his family) arrives in Greece, he must apply for a residence permit at the local Aliens Bureau of the Decentralized Administration Office prior to the expiration of the visa. The American generally applies for this in person, though he may issue a power of attorney to a third person or be represented by his spouse, a parent or a child of majority age. In addition to the application, the US applicant must pay a fee and, in accordance with Article 15 of Law 4251/2014, submit an employment agreement to the Greek authorities proving that the applicant's salary is at least equal to, or in excess of, an unskilled laborer's salary.

Assuming everything goes to plan, the Aliens Bureau will issue a certification of submission to legalize the residence. This is generally valid for one year. It is within the Aliens Bureau's discretion whether to subject the US citizen to an interview. Not surprisingly, if the US citizen should fail to appear for such an interview, the application for the residence permission will be rejected. The US applicant will also need to demonstrate that he has full health insurance for himself and any dependents.

In addition to the above, the US citizen must not be considered a threat to Greece's public policy, internal security, international relations, public health and must not be listed as "unwanted" in any national database

After five years or residency and employment in Greece, the US citizen may apply for, and receive, a long-term EU-wide residency and work permit.

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Issues US Corporations Face when Seeking to Transfer Personnel to Italy

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Immigration into Italy, including immigration by managers and employees, is governed by Law No. 189 of July 30, 2002, as amended and integrated by various legislative decrees implementing EU Directives. Additionally, various Italian *Ministeri* (Departments) have issued regulations regarding immigration into Italy.

US Citizens with Dual Citizenship in Italy

If a US-citizen employee has dual citizenship with Italy (or any other EU country), according to Article 45 of the EU Treaty, this employee enjoys the rights of free movement, residency, and employment in any EU member state. Such rights may be restricted only on very narrow grounds, such as a threat to public order, state security, or public security. It should be added that a 1991 amendment to Italy's Citizenship Law eased the requirement for obtaining Italian citizenship. Under that law, one needs to evidence only a single Italian ancestor (e.g., a 19th century emigrant) to obtain Italian citizenship. This amendment has directly resulted in a substantial increase in the number of US citizens who have obtained dual citizenship with Italy.

A citizen of an EU member state may be hired and work in Italy under the same terms and condition as any Italian citizen. EU citizens enjoy all the same rights and protections as do Italians in Italy. To obtain a Residency Permit (*Permesso di Soggiorno*), an EU citizen must register with the local citizen registry office (*Uffico Anagrafe*) and submit certain documents (e.g., employment data). The same applies to this individual's family members assuming that they, too, are EU citizens. After being in Italy for five years, EU citizens may obtain a permanent residency permit (that is subject to revocation if the EU citizen does not live in Italy for two years).

How Does a US Citizen Obtain a Residency and Work Permit in Italy?

Should a US citizen not have dual citizenship with an EU member state, the procedure to reside and work in Italy becomes more complicated.

To begin, the granting of a Residency Permit for an employee is subject to quotas that Italy's Ministry of Interior updates and publishes annually. Italian employers wishing to hire a US citizen must submit an application to the Main Office for Immigration (*Sportello Unico per l'Immigrazione*) setting forth why the employer intends to hire a non-EU national. The employer must include the employment agreement to be concluded with this application, as well as other supporting documentation. Should the Main Office for Immigration approve the application, in conjunction with the local central government agency (such an agency exists in every Italian province (*Prefettura*)), the US citizen may obtain his visa from a local Italian Consulate or the Italian Embassy in Washington, DC.

Shortly after arriving in Italy with the approved application, the immigrant must appear at a local police station (*Questura*) to obtain the Residency Permit. Are we now done? No!

The "immigrant" must also register with the local citizen registry office (*Uffico Anagrafe*) to apply for and obtain an ID Card (*Carta di Identità*), and also register with the local tax agency. Strictly from an employment perspective, the US citizen now enjoys the same rights and protection as does any Italian. This means, of course, that the US citizen must begin contributing to the social security system and pay Italian income tax. Be forewarned, the entire process may take months.

Intra-Company Transfers of Employees from the United States to Italy

Italy enacted Legislative Decree No. 253 of December 26, 2016, to transform EU Directive 2014/66 into Italian law. EU Directive 2014/66 governs work permits for managers, specialized employees, and trainees who are citizens of a non-EU country and who are being transferred to Italy as part of an intra-company transfer.

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To begin, intra-company transfers are not subject to a quota or any other restrictions (e.g., time limitations). The US citizen must file an application with the local Main Office for Immigration, which must respond within 45 days. When subsequently arriving in Italy, the US citizen is granted an Intra-Company Transfer Residency Permit (*Permesso di Soggiorno ICT*), the term of which may not exceed three years for managers and specialized employees or one year for trainees. Family members may also benefit from this permit. These rules apply also to employees who have an intra-company transfer permit issued by another EU member state.

The standard procedure for obtaining a *Permesso di Soggiorno* is subject to some relatively minor exceptions if innovative or high-tech companies are involved.

Finally, if the corporate conglomerate signs an agreement with the Italian Ministry of Interior, the intra-company transfer of personnel will be simplified (and quickened) to an even greater degree.

Social Security and Tax Issues

There are two other matters that are worth noting regarding the immigration of US managers to Italy. First, the Social Security Treaty between Italy and the United States of May 23, 1973 (entered into force on November 1, 1978, and amended in 1984) allows US citizens to have the social security contributions that they pay into the Italian social security system be transferred to the US Social Security Administration.

This may be significant for a US citizen because if that individual should not have sufficient credits to qualify for social security benefits in Italy and/or in the United States individually, he may combine his credits from one country to those of the other country so as to hopefully qualify for social security benefits in at least one of the two countries.

Second, the 2017 Italian Budget Law (Article 1(152) Law No. 232/2016) introduced a special tax regime for people who transfer their tax residence to Italy and who have not been resident in Italy for at least nine of the ten previous years. This new tax regime calls for a flat tax of EUR 100,000, regardless of the amount of income earned abroad. This flat tax substitutes the ordinary and progressive income tax. This option is available also to family members, though they will each be subject to a flat tax of EUR 25,000. Income earned in Italy, if any, will be taxed at the normal rate. Moreover, the US citizen does not need to declare his foreign assets or income in his Italian tax return because the flat tax "covers" everything. This scheme was recently used by the famous soccer player Ronaldo after his transfer to Juventus Turin (under Italian law, professional soccer players are deemed employees, albeit subject to special rules). Needless to say, this special tax regime is of use only to wealthy and highly-paid managers (as well as to wealthy foreign citizens establishing their residency in Italy).

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Some Things Americans Should Know When Seeking to Work in the Netherlands

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If a US citizen wishes to go to the Netherlands, there are certain immigration procedures he needs to follow. This article gives an overview of immigration requirements for the Netherlands. In addition, this article contains a summary of some relevant Dutch employment laws that US employees will face when employed in the Netherlands.

Immigration Requirements

Entry and Stay

US nationals who wish to enter and stay in the Netherlands for up to 90 days will require a valid passport. They may be in the Schengen area (including the Netherlands) for a maximum of 90 days within a 180-day period, as long as they have a valid US passport. The 180-day period is a rolling period, meaning that for every day they are in the Schengen area, one has to count back from 180 days to verify whether the 90-day threshold has been exceeded. US nationals wishing to work in the Netherlands must first obtain work authorization issued by the Dutch labor authorities.

US nationals planning to stay in the Netherlands for longer than 90 days must have a Dutch residence permit, as issued by the Dutch Immigration Authorities. This permit is typically a "single permit", meaning it is both a residence and work permit, through their employer.

Legal Work Status

The Dutch Foreign Nationals Employment Act sets forth that the Netherlands has a strict policy regarding the employment of foreign nationals. The purpose of this statute is to protect the Dutch labor market and to avoid unfair competition. Simultaneously, the Dutch government strives to become a strong "knowledge economy". As a result, procedures to acquire work authorizations for foreign nationals contributing to the Dutch knowledge economy are relatively straightforward. It is the responsibility of the employer to ensure its employees are authorized to work in the Netherlands. The most commonly used work authorization categories for US nationals contributing to the Dutch knowledge economy are as follows:

Intra-Corporate Transferee Directive

US nationals posted for more than 90 days to a Dutch branch office of their non-EU employer who retain their employment agreement (for example, an employment agreement governed by the laws of a US state) may be eligible for an intra-corporate permit as long as the employee was residing outside the European Union just prior to working in the Netherlands. If the Directive applies to a US national, that individual is not permitted to opt for an alternative national immigration procedure. Once in possession of an Intra-Corporate Transferee Directive permit, the US national may work also in other EU member states, however, that state's specific conditions will apply.

Highly-Skilled Migrant Permit

Companies registered as a recognized sponsor with the Dutch Immigration Authorities may hire Highly-Skilled Migrants based on an employment agreement governed by Dutch law. Recognized sponsors also have the right to sponsor foreign nationals posted to the Netherlands as long as they do not fall within the scope of the above-referenced Intra-Corporate Transferee Directive.

Recognized sponsors may apply for Highly-Skilled Migrant work permits with the Dutch labor authorities for US nationals who intend to spend fewer than 91 days in the Netherlands. Conversely, a Highly-Skilled Migrant permit (which is both a residence and work permit), as issued by the Dutch immigration authorities, would be the appropriate permit if the US national intends to spend more than 90 days in the Netherlands. The Highly-Skilled Migrant permit authorizes the US national to work only in the Netherlands. For other EU member states, a national work authorization as issued by the respective country would be required.

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To be eligible for a Highly-Skilled Migrant permit or an Intra-Corporate Transferee Directive permit, US nationals must satisfy a salary threshold, which is higher than the Netherlands' statutory minimum wage. The salary threshold is updated on January 1 of each year. For individuals under 30, the salary threshold for 2020 is EUR 3,381 per month, excluding holiday allowances, and for individuals at least 30 years old, the salary threshold is EUR 4,612 per month, excluding holiday allowance. US nationals who hold an Intra-Corporate Transferee Directive permit or a Highly-Skilled Migrant permit may be self-employed as long as they continue to meet the respective conditions for the permit they hold.

Orientation Year

US nationals who recently graduated from university may be eligible for an Orientation Year permit in the Netherlands. The Dutch company can hire a US national based on an employment agreement governed by Dutch law or post an employee to the Netherlands while observing his employment agreement under the laws of a US state. The Dutch company does not need to be a recognized sponsor to host a recent US graduate for his orientation year. Similar to the Highly-Skilled Migrant permit, the Orientation Year permit authorizes US nationals to work only in the Netherlands.

Immediate family members of US nationals in possession of an Intra-Corporate Transferee Directive permit, a Highly-Skilled Migrant permit, or an Orientation Year permit are eligible for a dependent permit, which allows them also to reside and work in the Netherlands.

The Dutch American Friendship Treaty

The Dutch American Friendship Treaty (also known as the DAFT) is a treaty to facilitate commercial trade between the Netherlands and the United States. The DAFT allows US nationals to obtain a Dutch residence permit to be self-employed or to establish a business in the Netherlands. To qualify for a residence permit under the DAFT, the US national must do business between the Netherlands and the United States or he has to develop and lead the general business of a US company in the Netherlands. In addition, the US national must invest significant capital using his or her own funds. The amount depends on the corporate structure of the Dutch company, but must be at least EUR 4,500.

A residence permit based on DAFT does not allow US nationals to perform paid employment (e.g. postings or employment based on an employment agreement). Immediate family members of US nationals who hold a DAFT residence permit are eligible for a dependent residence permit that allows them to be self-employed and to reside in the Netherlands.

Registration in the Municipal Population Database

Regardless of the work authorization category, all US nationals who intend to stay in the Netherlands for more than four months within a six-month period must register as a resident in the local municipal population database. After completion of the registration, the municipality will issue a citizen service number, in Dutch known as BSN. The BSN is required for payroll and tax purposes.

Employment Law Requirements

If a US national wishes to work as an employee under a Dutch employment agreement, a Dutch employer must provide the agreement in writing at least one month before the employment begins. The agreement often includes terms such as the duration of the agreement (indefinite or fixed-term), the length of the probationary period, the salary and any vacation allowance, the number of paid leave days per year, and (if applicable) the relevant pension scheme and collective labor agreement.

Wage

The gross legal minimum wage in the Netherlands depends on the employee's age and is revised twice per year in line with inflation As of July 1, 2019, the minimum wage for Dutch employees who are 21 years or older is EUR 1,635.60, per month based on a full-time working employee (between 36-40 hours a week).

Dutch employees are entitled to a vacation allowance equivalent to 8% of their annual salary, the thinking being that people generally spend more money while on vacation than otherwise. It is within the employer's discretion when to pay

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the vacation allowance. Most employees, however, receive their allowance in May. Employers are not required to pay a vacation allowance if the employee earns more than three times the minimum wage (if agreed in writing).

Vacation

Full-time employees must receive, by statute, at least 20 days of vacation per year. Part-time employees build up their vacation days per year in proportion to the number of hours they work. In the Netherlands, most companies give their employees 25 days of vacation per year. Those five extra vacation days are in excess of the statutory minimum.

Illness

Employees working in the Netherlands based on an employment agreement governed by Dutch law who become ill are entitled to a minimum of 70% of their wages during the first 104 weeks (two years) of illness. If the wage drops below the statutory minimum, the employee is entitled to the statutory minimum wage. In the Netherlands, most employers agree to pay 100% of the wages during the first year of illness.

Dismissals in the Netherlands

Dutch employment law provides for various types of dismissal procedures. In case of a layoff, or because an employee has been ill for more than two years, the employer must request prior approval and notify the Institute for Employee Benefit Schemes (*Uitvoeringsinstituut Werknemersverzekeringen*).

In other situations, the employer must petition the sub-district court to end the employment agreement based on a reasonable ground, such as frequent illness, bad behavior, failure to perform, or a disrupted employment relationship. An additional reasonable ground has been added by statute; as of January 1, 2020, a court may recognize the termination of an employment agreement based on a combination of dismissal grounds under the newly-created "combination ground".

Severance Payment

Employee are entitled to a severance payment upon termination if the employment relationship lasted for more than 24 months and if it was the employer who terminated the employment (regardless of whether permanent or temporary). The amount of severance that an employee will receive depends on the salary and the duration of the employment agreement. Some changes will enter into force in 2020, e.g., employees will be entitled to a severance payment as of day one of their employment relationship rather than only after 24 months of employment.

Conclusion

Even though the Netherlands is a small country, many immigration requirements and employment laws need to be considered when moving to the Netherlands. The immigration requirements are strict as the Dutch employment market is rather conservative and protective of employees in the Netherlands.

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Do You Wish to Work in the Land of the Norwegian Fjords?

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US citizens must typically apply for a residence permit to work in Norway. There are some exceptions, however, for certain occupations if the US citizen plans to work in Norway for fewer than 90 days. If the US citizen is employed with an international company that has a branch in Norway, he is able to work as a trainee at the Norwegian branch of the company. Also, if the US citizen is a commercial or business traveller, and does not have an employer in Norway, he may attend meetings, conferences, and other related work without applying for a visa.

Should the above-mentioned 90 days not suffice, or if the US citizen wishes to stay in Norway permanently, he will need a residence permit. What kind residence permit the US citizen should apply for depends on his qualifications and the type of work in which he will engage in Norway.

The US citizen may apply from abroad online at udi.no/en and then submit his application to one of the Visa Application Centers of VFS Global in the United States. This short article will discuss the various types of visas available for US citizens wishing to work in Norway, as well as some of the practical issues often faced.

Work Permits

Anyone applying for a work permit in Norway must have completed a higher education or have some special qualifications that are obtained through significant work experience. Skilled workers with an employer in Norway, employees of international companies or abroad who are going on assignment in Norway, or self-employed persons may be granted a residence permit.

If a US citizen wishes to work for a Norwegian employer, he must have received a concrete job offer for a full-time job, or at least an 80 percent position. Accordingly, if a US citizen should get a 70 percent position as a teacher, and a 30 percent position at a supermarket, he would not qualify for a visa. He must also have the qualifications that the job requires. A residence permit may be valid for up to three years at a time; after three years, the US citizen may apply for a permanent residence permit.

If the US citizen is self-employed or an employee of a foreign company, he may be granted a two-year permit, and may seek two-year extensions two times for an aggregate of up to six years in total assuming that the foreign company has a contract in place with a Norwegian entity to perform certain tasks in Norway. The Norwegian enterprise must have a registered business address in Norway. If the US citizen wishes to apply for a new permit after having worked in Norway for six years, the US citizen will need to reside outside of Norway for at least two years before being allowed to apply for a new permit. Furthermore, if the US citizen is to perform assignments other than those set forth in the contract, the US citizen must also apply for a new residence permit.

A US citizen may also apply for a work permit if he wants to start his own business in Norway. As a self-employed person in Norway, a US citizen will be granted a permit for one year at a time as long as his business continues to satisfy all requirements. After three years, the US citizen may apply for a permanent residence permit. It is important that the US citizen plan to engage in long-term business activities in Norway. The business must be a sole proprietorship; it may not be a limited liability company. The work to be performed by the US citizen requires the qualifications of a skilled worker and the business should be so profitable that it has profits of at least US $28,000 per year prior to taxes. During this time, the US citizen may not engage in other work.

The US citizen may, of course, decide to work for another employer during his stay in Norway. If the US citizen wishes to work in the same type of position as before, he will not need to submit a new application. If, however, the US citizen wants to work in a new area, he must apply for a new permit, regardless of the change of employer.

What happens if the US citizen loses his job? If the US citizen has been laid off, he must notify the local police within seven days. He may then stay in Norway for up to six months to look for a new job, assuming that the residence permit is still valid.

Job Seekers

US citizens must generally have received a job offer in Norway before they may apply for a residence permit for work purposes. If a US citizen needs to move to

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Norway before being able to land a job he may, however, get a permit as a "job seeker" for up to six months at a time. It is important that the US citizen be qualified as a skilled worker, i.e. have a higher education or special skills, and actively be looking for employment as a skilled worker. He must also be able to demonstrate that he has sufficient disposable income to live and stay in Norway, i.e., have at least US $2,300 per month.

If the US citizen finds a job as a skilled worker, he must apply for a residence permit as a skilled worker. He may not begin working until such permit has actually been granted. If the job seeker fails to find a suitable job during the six-month stay, he must live outside of Norway for at least one year before being eligible to apply for a new residence permit as a job seeker.

Family

If the US citizen has been granted a residence permit for skilled workers, his family may seek to come to Norway via a family immigration. This includes the spouse, registered partners, cohabitants, and children. Children over the age of 18 may be eligible for family reunion only under certain conditions, such as serious health problems or if the child is still living with his parents and the entire family is moving to Norway.

If a family member does not satisfy the requirements for family immigration, he may apply for a residence permit for work or a study permit.

Pay and Working Conditions in Norway

To be granted a residence permit, the pay and working conditions of the US citizen must not be less than what is "normal" in Norway. For instance, if the position requires a master's degree, the salary must be at least NOK 428,200 (approximately US $49,800) per year prior to taxes, and NOK 397,100 (approximately US $46,000) for a bachelor's degree.

As an employee in Norway, a US citizen must have a tax deduction card, file tax returns, and receive tax assessment notices. Taxes are used to finance public services, such as health services and education.

Working conditions in Norway are highly regulated and are aimed to protect all workers in Norway. Both international and foreign companies must observe Norwegian laws if they have employees working in Norway. All Norwegian employee or workers posted in Norway have the right to a safe working environment. Also, all employees in Norway are entitled to at least 25 days of vacation per year as well as overtime payment.

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The Entry of US Citizen Managers into the Slovakian Labor Market

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Like with most EU countries, US citizens are not required to apply for a visa for stays for up to 90 days in Schengen countries (including Slovakia). This applies, however, only if no income is earned. Otherwise, citizens of the United States constitute Third Country Nationals[1] under Slovakian immigration law. As a result, US citizens do not have free access to the Slovakian labor market. Instead, US citizens, like all other Third Country Nationals, are subject to the Act on Employment Services[2] when it comes to working in the Slovak Republic and the Act on Stay of Foreign Nationals[3] when it comes to entering and residing in the Slovak Republic.

US citizens may work in Slovakia as long as they have obtained an employment permit (in the form of a unified work permit or a blue card) or have been transferred as part of an intra-group transfer. The unified work permit and the blue card are the most common form of work permits for US citizens as the process for obtaining them is relatively simple. Each of the unified work permit and the blue card allows US citizens to stay in Slovakia and to work in Slovakia without having to go through an application procedure with two separate governmental agencies. This "one-stop shopping" may be done by submitting an application only to the local Office of Representation of the Slovak Republic.

This article will discuss what steps a US citizen must undertake to be able to work legally in Slovakia.

Work Permit

A work permit is typically used for seasonal work.[4] Unlike the unified work permit and the blue card, a work permit does not also constitute a residence permit to stay in Slovakia.

To obtain a work permit, a US citizen must submit an application to the local Slovakian Job Office. The US citizen may submit this application either in person or via the mail. The US citizen may also submit the application via the future employer on the basis of a power of attorney from the US citizen.

The work permit application must include a document evidencing the US citizen's professional qualifications for the open position and the employment agreement (or an employment agreement for future work).

Because the work permit does not simultaneously serve as a residence permit, US nationals need to obtain a separate residence permit so that they can complete their employment duties. A short-term (Schengen) visa is sufficient for such short-term stays for US nationals. A long-term stay requires a national long-term visa or a residence permit issued by the respective administrative Slovakian authority (see below).

Unified Permit

A unified permit is a temporary residence permit to work in Slovakia (all types of employment regardless of qualification). Holding a unified permit allows US citizens to stay in Slovakia for longer than 90 days and to engage in the employment for which the permit was issued.

A unified permit is issued on the basis of a certificate for the opportunity to be hired for up to two years for a vacant position as issued by the Job Office. Both the future employer and the US citizen must cooperate with one another to obtain the certificate for an opportunity to be hired. Specifically, the future employer must notify the Job Office of the vacant position. The employer must submit this notification at least 30 days prior to when the US citizen interested in the position submits his application for temporary residency. If the vacant position is not filled by a person already registered as a job seeker within 20 days from the day the employer submits the notification, the employer may issue a written promise of employment or conclude an employment agreement with the US citizen.

The US citizen may submit an application for a temporary residence permit for the purpose of employment at the earliest upon the expiration of 20 days from the date the employer notified the Job Office of the vacant position. It will suffice for the US citizen to submit only the application

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for the temporary residence permit for the purposes of employment. The US citizen is not required to submit also an application for a work permit with the relevant Job Office.

The US citizen must generally submit his application for a unified work permit or for a blue card (see below) with the local Slovak Office of Representation. The application for the work permit must include documentation on the education achieved by the applicant, an employment agreement, or a written promise from the employer to accept the US citizen for the vacant position, and certification that the US citizen has sufficient means to finance his stay.[5]

The Slovak authorities are required to render a decision on an application within 90 days from receipt. The US citizen may not reside nor work in Slovakia, however, until the unified permit has actually been issued.

Once the unified permit has been issued, the US citizen must enter Slovakia within 180 days of the issuance and report to the foreign police office within three business days. Additionally, the US citizen must procure health insurance within three business days of signing for the document that allows him to stay in Slovakia and submit to the foreign police office a medical certificate no older than 30 days confirming that he does not suffer from allergies or medical conditions that may constitute a public health hazard. The latter certificate must be submitted within 30 days to the foreign police office.

Blue Card

The blue card is a temporary stay permit that allows US citizens to stay in Slovakia for more than 90 days and to engage in employment requiring a professional qualification. To obtain a blue card the US citizen must evidence a completed university education and be able to present an employment agreement (or a written promise of an employment from the employer) for at least one year with a salary that is at least 1.5 times the average salary of an employee in Slovakia.

Like with a unified card, the blue card is issued for a specific vacant position notified to the local Job Office by the employer. For a blue card, however, it is sufficient for the employer to report the vacant position only 15 days prior to the US citizen's submission of the blue card application. The blue card is issued for 90 days longer than the period for which the employment agreement has been concluded. In the aggregate, the blue card is not to be for longer than four years.

The main differences between a blue card and the unified card are the conditions that are to be satisfied and the documents that must be submitted. The issuance of a blue card takes 30 days. If granted, the blue card imposes the same obligations on US citizens as does a unified work permit.

Intra-Company Transfer

A temporary residence permit for an intra-company transfer from the United States may also be available to US citizens. The card for an intra-company transfer is designated for managers, specialists, and trainees of an affiliated entity. Unlike in the case of a unified work permit or a blue card, the employer may offer the vacant position directly to the US citizen without first having to offer the position to an applicant within the domestic labor market and waiting for the position to be filled. Instead, the employer must only notify the local Job Office of the position.

Changes in Employment, Necessary Documents

An employment permit, a unified work permit, and the blue card are linked to a specific vacant position with a specific employer. Should the employee be laid off, he must report this to the relevant agency. If such a change occurs and the employer duly reported it, the US citizen will be granted a 60-day protective period to find new employment and to apply for a new permit.

Each of the above mentioned types of work permits require the US citizen to submit an application, together with all of the relevant documents for the respective permit (including general travel documents, an employment agreement, a promise of employment by the employee, a certificate of accommodation, a criminal report certificate, evidence of financial means, etc.). Any documents from the United States must be certified and be submitted both in their original language together with a certified Slovakian translation. Not surprisingly, the US citizen must submit a complete set of documents for the respective work permit to be issued.

The unified work permit, blue card, and a card for an intra-

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company transfer are generally the most prevalent types of permits for US citizens to work in the Slovak Republic as long as the employee at issue is a manager or other high-level employee. As all of those permits are of a dual nature (meaning they serve as a work and resident permit simultaneously), the authors believe these types of work permits are the most convenient (in terms of the application process) and the quickest way to get permission to work in Slovakia.

Regardless, applicants must always keep in mind that a number of requirements must be met for a permit to be issued. Failure to submit a complete set of documents may very well jeopardize the issuance of a permit but, at the very least, will slow the process down. It should go without saying, the last thing a US applicant needs when wishing to work in Slovakia is additional hassles with respect to a work permit.

[1] *Third country national is a national of a country other than of an EU member state, Iceland, Liechtenstein, Norway, or Switzerland*

[2] *Law No. 5/2004 Cool., on Employment Services, as amended*

[3] *Law No. 326/1999 Coll., on Stay of Foreign Nationals, as amended*

[4] *Work related stays are for a maximum of 180 days within 12 continuous months.*

[5] *The required extent of financial security must be for the entire stay and correspond to the minimum living wage in Slovakia for each month of the stay (this will be EUR 210.20 per month until June 30, 2020). Should the stay exceed one year, it is necessary to have at one's disposal at least 12 times the minimum living wage, i.e., EUR 2,522.40. Financial security of the stay may be evidenced also by an affidavit issued by the employer regarding the extent of the agreed wages or by a bank statement related to the bank account maintained by the foreign national.*

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Immigration of US Expatriates to Spain

By Daniela Pretus - Cases & Lacambra (USA and Spain) at daniela.pretus@caseslacambra.com

Businesspeople from the United States that wish to live or work in Spain must first obtain a visa. There are generally two types of temporary residence visas, those that authorize employment and those that do not.

Working Visas

A working visa allows US citizens to live and work in Spain as an employee or as an independent contractor. To qualify for the visa, the employer must provide an employment agreement for at least one year, show proof of sufficient financial resources to perform the agreement (ability to pay salary and payroll taxes), and demonstrate that the employee has the skills and professional qualifications required for the position. In addition, the position being filled must be listed either on the government's national shortage occupation list or have been advertised without finding suitable candidates from within Spain or the European Union. Highly-qualified professionals, researchers, and employees transferred as part of an intra-group transfer are, however, generally exempt from this requirement. Depending on the industry, there may also be licensing and regulatory issues.

Non-Lucrative Visas

A non-lucrative visa allows US citizens to live in Spain without working, provided they can show proof of financial resources to support the immigrant and their family (about EUR 26,000 per year for the primary applicant plus EUR 6,500 for each additional dependent), and maintain private health insurance in Spain for the duration of their stay.

In 2013, Spain created certain categories of investment visas to attract foreign investment in Spain.[1] Under these "Golden Visas", foreigners and their families may apply for residence in Spain based on an investment of: a) EUR 500,000 in real estate in Spain; b) EUR 2 million in government securities; c) EUR 1 million in Spanish companies or bank deposits; or d) sufficient funds to develop a new business of "general interest" that will create jobs. The advantage of these visas is that there is no minimum physical presence requirement to maintain a valid status.

The immigrant's spouse may generally apply for his own residence visa, or apply for a family reunification visa (except for investment visas, which allow the entire family to apply under one visa). Spouses (and registered domestic partners) may generally apply for employment authorization once they receive a permanent job offer in Spain.

Temporary work and residence visas are typically initially granted for one year, and can be renewed for two years, then five years, and then indefinitely. After five years of continuous temporary residence, an immigrant may apply for permanent residency, and after ten years of continuous residence, he is eligible to apply for Spanish citizenship.

Potential Tax Issues for US Citizens in Spain

While obtaining a visa to reside or work in Spain may seem relatively simple for a US citizen, one of the primary issues that may require advance planning concerns taxation.

In general, a US citizen that spends 183 days or more in Spain during a calendar year will become a Spanish tax resident, and potentially be taxed there on his worldwide income. Income is taxed at progressive tax rates that range from 19% (for income over EUR 12,450) to 45% (for income over EUR 60,000), with additional income tax imposed at a regional level. In addition, Spanish tax residents are required to file information returns on certain foreign assets (bank accounts, investment accounts, real estate, and life insurance policies) worth more than EUR 50,000 for each category of asset.

There are, however, opportunities for planning prior to the transition. Depending on the date of arrival in Spain, a US citizen might be considered a non-resident for tax purposes in the first tax year, and only pay taxes on his or her Spain-based income. Further, relief from double taxation may be available under the Spain-U.S. Income Tax Treaty.[2]

Additionally, if a US citizen is transferred to Spain for fewer than five years, he may be exempt from Social Security obligations in Spain pursuant to the Totalization Agreement signed between the two countries. Note that there is no exemption on tax residency computation for student visas (whereas in the United States, the student

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visa exemption is often relied on by foreign businesspeople and their families to avoid tax residency), meaning individuals residing in Spain on a student visa may easily become tax residents before completing their course work.

Spain's Special "Inpatriate" Tax Regime for Inbound Expatriates

One favorable tax incentive for US expats that is worth mentioning is Spain's Special Tax Regime for inbound transferees. This is more commonly known as the "Beckham Law", as the soccer star was one of the first to take advantage of it (although ironically, athletes were excluded from the regime in a subsequent amendment). This tax regime allows for certain foreign workers transferred to Spain to be taxed as non-residents even though they are considered tax residents of Spain. To be eligible for this regime, expatriates must relocate to Spain under an employment agreement, or as a director of a company in which they hold less than 25% of the shares or voting power. In addition, they may not have been a tax resident of Spain in the last ten years.

This tax regime must be applied for within the first six months of arriving in Spain. Under the special rules, the expatriate would be taxed at a flat rate of 24% on employment income from any source up to EUR 600,000 (45% on any amount exceeding EUR 600,000), 24% on other Spain source non-employment income, and 19% to 23% on Spain-sourced dividends, income, and capital gains. These rules apply for the tax year in which the US citizen became a tax resident and the following five years.

Succession Planning and Gifting

US citizens relocating to Spain may also need to consider laws applicable to succession and gifting. In Spain, estate and gift tax is paid by the beneficiary of the estate and the recipient of the gift, respectively (as opposed to by the estate and donor as in the United States). This could create an additional tax burden for a US citizen that receives a gift or inheritance while living in Spain (the exact rate will depend on the Autonomous Community of residence).

In addition, if a US citizen passes away while residing in Spain, his or her estate may be governed by the laws of Spain (the decedent's last habitual residence). This could create issues with regard to forced heirship and the enforceability of trusts. Finally, even after a US citizen is no longer living in Spain, assets considered to be located in Spain (such as real estate or shares in a Spanish company) will be subject to Spanish estate tax. Care should be taking when purchasing real estate or stock while living in Spain to title assets in a tax-efficient manner.

In sum, the legal process for a US citizen wishing to move to Spain to work, live, or run a business is a relatively straightforward process. However, pre-immigration planning is recommended to ensure a tax-efficient transition and to create an estate plan that adapts to the intricacies of an international relocation.

[1] Law 14/2013, dated September 27, on Support of Entrepreneurs and their Internationalization.

[2] Signed on February 22, 1990, and amended Protocol signed in 2013 and ratified in 2019. Entered into force on November 27, 2019.

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What To Do as an American to Obtain a Work Permit in Sweden

By Odd Swarting and Alexander R. Besher - Calissendorff Swarting (Stockholm, Sweden) at odd.swarting@caswa.se and alexander.besher@caswa.se, respectively

At the end of 2008 the Swedish Parliament adopted the basis for the current legislation on work permits for nationals from outside the European Union (EU) – so-called third-country nationals. This article focuses on the requirements that US nationals should meet if they intend to work, either temporarily or permanently, in Sweden. A US national may obtain a work permit either as an employee or as a self-employed individual. This brief article will discuss permits for employment in Sweden. This article will not, however, discuss self-employment nor will it address special rules applicable to certain types of jobs, such as berry-picking, au pair work, sports and athletic training, short-term seasonal work, performing arts and entertainment, or visiting scholars

The Initial Steps: Visit Sweden and Find an Employer

The first step is to find a potential employer in Sweden. Although not legally required, US citizens may consider visiting the employer before deciding to apply for a work permit. Should an American choose to visit a potential employer in Sweden it should be kept in mind that US citizens are exempt from visa requirements as long as their visit does not exceed 90 days. During such a visit to Sweden the US citizen may not work in Sweden. A work permit must actually be issued before commencing with work.

The Application Process and Requirements for a Work Permit in Sweden

US citizens must generally apply for a work permit and have it be issued before traveling to Sweden to commence working. Ideally, the potential employer will provide a written offer to the US citizen prior to submitting the work permit application. The job offer is also subject to terms of the relevant trade union.

To obtain a work permit, the US citizen must have:

- a valid US passport;
- been offered employment under conditions that are, at the very least, on par with those set by Swedish collective agreements or customary to the relevant occupation or industry;
- been offered a salary that is, at the minimum, on par with that set by Swedish collective agreements or that is customary to the relevant occupation or industry;
- been offered a position that enables the US citizen to support himself financially; to satisfy this requirement, the US citizen should earn at least SEK 13,000 (approximately US $ 1,350) per month before tax deductions; and
- an employer who intends to cover the American's health insurance, life insurance, employment insurance, and pension insurance upon commencing work.

To obtain a work permit, the American must satisfy the requirements for the job that has been offered. The requirements will be deemed not to have been satisfied if the American simultaneously holds two or more jobs in Sweden. To be employed by a Swedish employer, the American needs a work permit regardless of whether his regular working place is in Sweden or abroad, of whether he is employed or hired by an employment agency that provides personnel to a company in Sweden, or if the American has been transferred to Sweden as the result of an intra-company transfer.

A work permit may initially not be granted in excess of two years or, if the position is for shorter than two years, for the duration of the job. During the first 24 months, the work permit is limited to the specific employer and to the job set forth in the permit. Should the US citizen be offered a different job during this time period, he would then need to apply for a new work permit, corresponding with the new job offer.

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Extension of a Work Permit

Should a US citizen wish to continue working in Sweden beyond the expiration date of his permit, he would need to apply for an extension. If the US citizen holds a permit for six months or longer, and applies for a new permit before the current one expires, he has the right to continue working in Sweden while waiting for a decision. The US citizen must apply for an extension within three months before the current work permit expires.

After applying for an extension of the work permit, the Swedish Migration Agency (Sw. Migrationsverket) will determine whether the US applicant met the conditions for the work permit for the duration that he worked in Sweden. This includes the employer's coverage of health insurance, life insurance, workmen's compensation, and pension insurance for the entire time that the employee held the work permit. Not surprisingly, the renewed job offer must also satisfy all work permit conditions. If the conditions of the work permit are not satisfied, the Swedish authorities will deny the renewal application and the US citizen will be required to return to the United States in accordance with the terms set forth in the Migration Agency's decision.

The Work Permit Applicant's Family

A family member may also obtain a residence permit that covers the same period as the employee's work permit. As such, every family member must be financially supported by the employee or his partner. "Family members" in this instance refer to the following: spouse, cohabiting partner, registered partner, and unmarried children under the age of 21. Unmarried children 21 years or older may, however, be granted a permit in certain cases.

The Prospects of Obtaining a Permanent Residence Permit

According to Swedish legislation, a work permit may be granted for a total of four years within a continuous period of seven years. After working in Sweden for four years, the US citizen would be eligible to apply for a permanent residence permit for himself and on behalf of his family members. A permanent residence permit would allow the American to stay in Sweden indefinitely, regardless of whether he has a job in Sweden.

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US Nationals Traveling to and Working in Switzerland

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Under Swiss immigration law, US citizens are "third country nationals". The immigration of third country nationals is governed primarily by the Federal Act on Foreign Nationals and Integration and its corresponding ordinance. In addition, Switzerland is a signatory country to the General Agreement on Trade in Services (GATS), which is a multilateral framework agreement that applies to all member states of the World Trade Organization (WTO). Finally, Switzerland ratified the Schengen Agreement concerning the creation of Europe's "Schengen Area".

Qualification of Activity in Switzerland – Business Travel vs. Gainful Employment

Whether a business trip to Switzerland constitutes "business travel" or "gainful employment" is key in determining whether and, if so, what type of visa and permit a US citizen must obtain.

Business travel generally includes attending meetings, unpaid training, or business events as well as looking for potential business opportunities. As soon as the activities, however, focus on earning compensation or income, they typically constitute "gainful employment". For example, gainful employment includes training on the job, internships and traineeships and acts performed to complete a specific project (a works contract) in Switzerland.

While it is often difficult to delineate between "business travel" or "gainful employment, it is often advisable to assume that it is the latter if the business activity is more than just attending business meetings or events.

Business Travel of US Citizens

US citizens typically do not require a visa for business travel to the Schengen Area as long as their stay does not exceed 90 days within a 180-day period. Stays are cumulative and include visits to any country within the Schengen Area. Only when the activities of US citizens constitute gainful employment, or when the stay of US citizens exceeds 90 days within a 180-day period, is a visa required before entering the Schengen Area. Stays exceeding 90 days within a 180-day period without a visa may subject the US citizen to a fine or a travel ban.

Gainful Employment of US Citizens

Individuals that live outside of Switzerland, and generally work outside Switzerland, but provide services in Switzerland for only up to eight days per calendar year, do not require a permit nor a visa. Certain industries (e.g., primary or secondary construction industry and civil engineering, catering and hotel services, industrial and private cleaners, surveillance and security services, and services in the sex industry), however, require a work permit and visa as of the first day.

If the gainful employment of a US citizen should exceed eight days per calendar year, then that individual is subject to Swiss visa and work permit requirements. Various types of permits are available to US citizens, depending on the duration of their gainful employment in Switzerland,

- 120 days' permit (so-called K2 visa) for a maximum of 120 days within one year;
- Short-term residence permit (so-called L permit) for a duration of up to one year; and
- Long-term residence permit (s-called B permit) for a duration exceeding one year.

120 Days' Permit (K2 Visa)

If the gainful employment does not exceed 120 days within one year, US citizens may apply for a K2 visa. A K2 visa allows the holder to travel to Switzerland for four months at a time or for a total of 120 non-continuous days within a year from the issuance of the visa, whichever the case may be. US citizens must obtain an entry visa at a Swiss representation outside of Switzerland before entering the country. Because the gainful employment will be temporary, US citizens holding a K2 visa do not need to register with the local authorities upon entering Switzerland. Also, it is the obligation of the US citizen (or his employer) to track the number of days used under the K2 visa so as to avoid an overstay under the K2 visa.

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Short-Term and Long-Term Residence Permit

Short-term (L Permit) and long-term residence permits (B Permit) are subject to stringent requirements that apply to all third-country nationals including, of course, US citizens. Short-term residence permits are granted to US citizens with an employment agreement not exceeding one year while long-term residence permits are the proper permits for employment agreements for more than one year.

US citizens must be able to demonstrate that they are highly qualified (managers, specialists or other skilled professionals) to obtain either a short-term or long-term permit. To demonstrate this the US citizen must hold not only a university degree, but also have several years of professional work experience. Depending on the type of permit sought, other aspects of the application may include the applicant's professional and social adaptability, knowledge of a local language, and age.

The prospective Swiss employer must also prove that there is no suitable person from Switzerland or from an EU or EFTA country to fill the position. Finally, the salary, social security contributions, and the terms of employment for the US citizen must be in accordance with conditions customary to the region, the profession, and the particular sector.

General Agreement on Trade in Services (GATS)

Because it is often quite difficult for a Swiss company to demonstrate to the satisfaction of the Swiss immigration authorities that a Swiss national or a national of an EU or EFTA country could not be found for a position, Swiss employers that intend to hire a US citizen often take advantage of GATS. Under GATS, citizens of WTO member states may more easily access the Swiss labor market as they are afforded "national treatment", meaning they have the same rights as domestic workers.

Specifically, GATS applies to (1) US citizens who provide services in Switzerland based on a service agreement concluded between a US service provider and a Swiss company, and (2) US nationals who are transferred from a US affiliate as part of an intra-company transfer.

Under GATS, all requirements (specifically regarding qualification) as discussed above must be satisfied, except that the employer is not required to establish that there is no Swiss citizen or a citizen of an EU or EFTA member state that can fill the position.

Quotas – The Final Hurdle

Regardless of whether a short-term or long-term residence permit is approved under the Swiss national legislation or GATS, all applications are subject to annual quotas. Switzerland sets forth separate quotas for short-term and long-term residence permits that are distributed to the competent authorities quarterly. Once all quotas are exhausted, the Swiss authorities are prohibited from approving any more residence permit applications. As a result, it is important that US citizens keep their eye on quotas, and when they are released, to ensure that the Swiss authorities are still permitted to issue an approval upon receiving an application.

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Visa Options and Issues for US Companies Sending Personnel to the United Kingdom

By Jennifer Stevens - Laura Devine Attorneys (New York, New York) at jennifer.stevens@lauradevine.com

There are various UK immigration categories available for workers and businesspeople, the majority of which fall under the point-based immigration system (PBS). They all have their unique requirements, as well as potential issues and pitfalls, so it is essential to have a full understanding before applying.

European Employees and the Impact of Brexit

The United Kingdom has now left the European Union, but there is a transitional period until December 31, 2020, that will enable EEA and Swiss nationals to continue to live and work in the United Kingdom on the basis of free movement. Similarly, UK employers would retain their current access to the EEA/Swiss workforce until the end of this period. Any EEA Swiss nationals entering before the end of 2020 will have until June 30, 2021, to apply under the EU Settlement Scheme. US companies looking to send any EEA/Swiss workers to the United Kingdom should, therefore, consider transferring them before December 31, 2020, to benefit from the right of free movement.

New PBS for 2021

The United Kingdom released a policy statement on February 19, 2020, providing further details of the new PBS that is set to be introduced on January 1, 2021. The information below focuses on the current PBS, but employers should ensure that they are aware of the changes that are approaching.

Visitors

Companies should consider whether the individual can go to the United Kingdom as a visitor, at least initially. US nationals do not usually require a visa to enter the United Kingdom as a visitor. They should be permitted entry on arrival in the United Kingdom for a period of six months and, although not permitted to live or be employed in the United Kingdom, there are limited business activities that may apply to an employee who is being sent to the United Kingdom for a short period, particularly where the employer has an affiliated company in the United Kingdom. Relevant permitted activities under the visitor rules include attending meetings, gathering information for employment overseas, as well as intra-company activities such as training, trouble shooting, and sharing skills and knowledge, provided this is for an internal project and no "work" is carried out directly with clients. There are other more specific activities, depending on the industry and the role of the US employee.

Employers must be aware that the visitor category is limited in its scope and should not be used simply to avoid obtaining a necessary work permit. If the UK Home Office determines that an employee breached the conditions of his leave (for example, by taking up employment or working for a business in the United Kingdom), the employee may be banned from the United Kingdom, which can have an ongoing impact not only on the individual, but also on the company.

Representative of an Overseas Business

This category (also known as the "sole representative" category) is for a company outside the United Kingdom that is sending a senior employee to the United Kingdom to open a branch or subsidiary that is to carry out the same business activities as the overseas company. This is a great option for US companies looking to expand into the United Kingdom, and who need someone who has experience within the company to do this. This category leads to an indefinite leave to remain in the United Kingdom (ILR) so it can be used for long-term transfers.

The main restrictions on this category are that the individual may not be a majority shareholder (over 50%) of the company at issue and there must currently not be a branch, subsidiary, or other representation in the United Kingdom (with some exceptions). If the individual owns the company, or there is already a presence in the United Kingdom, the company will need to consider other options, such as Tier 2 (see below). The employee is also permitted to work only for the company he represents in the United Kingdom.

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Tier 2

The main employer-sponsored category is Tier 2, which requires sponsorship from an established UK company that has been that has been granted a Tier 2 sponsor license by the UK Government's Home Office. Once the license is in place, it should be valid for four years and may be used to sponsor multiple employees. This is a popular option for companies who send multiple personnel to the United Kingdom.

Tier 2 can be used for current employees as well as for new hires who must be filling roles that the Home Office considers to be skilled. Once in the United Kingdom, the employee is restricted to working for the sponsor in the role that is detailed in the Certificate of Sponsorship. As a sponsor, an employer must satisfy additional sponsor duties. It is, therefore, essential that the UK company fully understands these duties and has the processes in place to meet them. If the company fails to satisfy any of its sponsor duties, the Home Office may withdraw the sponsor license, resulting in the sponsored worker's Tier 2 immigration permission being curtailed, requiring him to leave the United Kingdom within 60 days from the decision to curtail.

A further potential issue is the 12-month exclusionary period that applies once the Tier 2 worker leaves the United Kingdom and the sponsorship ends. This means that any visa application under Tier 2 could be refused for 12 months following the date of departure from the United Kingdom, unless an exemption applies (which is usually duration or salary based). Accordingly, the company needs to think carefully before bringing the employee back to the United States as this may hamper the future transfer of employees.

Also, only Tier 2 (General) rather than Tier 2 (Intra-Company Transfer (ICT)) leads to an indefinite leave to remain. Therefore, the company needs to consider at the start of the process whether the employee desires to remain in the United Kingdom on a long-term basis or permanently. If so, the employee should apply for Tier 2 (General) from the outset as the employee will not be able to switch from Tier 2 (ICT) to Tier 2 (General) after having arrived in the United Kingdom. Further, if the employee leaves to apply from the United States, the employee will likely be subject to the exclusion period.

There are also maximum periods for which individuals may remain in the United Kingdom under Tier 2. These are six years for Tier 2 (General) and five years for Tier 2 (ICT) (unless the guaranteed annual salary is at least £120,000; if the salary is in excess, it can be extended for up to nine years).

Tier 2 (General) usually requires the position at issue to be advertised in the United Kingdom; if so, this can easily add a month or two to the application process. If timing is a factor (which it often is), employers may just want to move ahead with Tier 2 (ICT), which can be finalized within a week or two.

Other Options

There may be other more straightforward options available to individuals, depending on their personal circumstances. For example, if a US citizen is in a relationship with a person who is considered settled in the United Kingdom (i.e., is British or holds an indefinite leave to remain) or with an EEA/Swiss national (although note the changes following Brexit mentioned above), this may simplify the entire procedure significantly. Accordingly, advisors may want to delve a little deeper into an employee's personal life, if appropriate, to see if this option is available.

General Grounds for Refusal

An adverse immigration history or a criminal record can be an issue for all UK immigration applications. It is, therefore, important for the employer to be aware of anything that may affect the outcome of a visa application in advance (bearing in mind any related employment law issues). There are mandatory grounds for refusal if the individual was convicted of an offense for which he was sentenced to imprisonment, if he had in the past overstayed his visa, or otherwise breached a condition of his stay. There are also discretionary grounds for refusal, including if within the 12 months prior to submitting the visa application, the applicant was convicted of, or admitted, an offense for which he received a non-custodial sentence or other out-of-court disposal that is part of his criminal record.

The United Kingdom, therefore, has various immigration options available to US companies transferring personnel, but it is essential that the company make an informed and considered decision on the best option before actually proceeding.

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Europeans in America, How Hard Can It Be? - ESTA, B, H-1B, B-1 in Lieu of H-1B, and O Visas

By Betina Schlossberg - Schlossberg Legal, PLLC (Ann Arbor, Michigan) at bschlossberg@bsblegal.com

Since so many foreigners regularly come to the United States on business, or to work, one may think that it is relatively easy to immigrate to the United States. It is actually not. We frequently get calls from companies wanting to send their employees to the United States for reduced periods to work temporarily in the United States. To the chagrin and surprise of many, it is not possible, however, for a non-American to travel to the United States to take care of a situation that requires immediate attention and hands-on work.

Business vs. Working

The first consideration worth making is to note the difference between "working" in the United States and coming to the United States "on business". Work, as Merriam-Webster explains, is to "perform duties regularly for wages or salary". On the other hand, business indicates more fluid activities, such as engaging in commercial or mercantile activities, transactions or dealings. To come to the United States to work, the visitor needs a "work" visa. Conversely, an ESTA or "visitor" visa may suffice if coming to the United States on business.

ESTA vs. B-1 Visa

Citizens of EU member states coming to the United States temporarily on business have two options: the Electronic System for Travel Authorization[1] "ESTA" and the Visitor for Business visa classification "B-1".

ESTA allows visitors for business to perform the same activities authorized with a B-1 visa without the hassle of getting a visa at their local US Consulate, but for a shorter period of time – only up to 90 days instead of 183 days. The uncertainty both ESTA and B-1 holders have is in regard to permissible activities. What activities in the United States are actually permissible?

Though there is a list, it is not exhaustive and many of the activities listed are ambiguous, leaving the business visitor in limbo. Authorized B-1/ESTA activities include attending conferences and conventions, negotiating contracts, presenting at board meetings, and, interestingly, installing, servicing, and maintaining equipment purchased abroad – as long as the original contract between the buyer and seller of the equipment includes a provision to that effect. Therefore, it is important for sellers to include a clause in the purchase agreement indicating that they -- the foreign company -- are responsible for installing, servicing, and maintaining the equipment sold to the US customer.

Employers frequently believe (or want to believe) that getting a B-1 visa for their employees doing business in the United States -- as opposed to simply coming on an ESTA -- adds a layer of "legality" to the business activities to be performed in the United States. This is not so. In addition, applying for a B-1 visa may actually complicate matters.

A denial of a B-1 visa -- or a denial of any visa for that matter -- materially changes an applicant's profile, which causes the existing ESTA to expire or to be a red flag in a future ESTA application. Consequently, the well-intentioned request of a temporary visa may leave the employee not only without a B-1 visa, but it may also leave him without an ESTA. Six months will need to pass before the applicant may obtain one again!

A recurrent issue for EU businesspeople when requesting an ESTA or B-1 visa is the destination of previous travel. Having visited or coming from certain "restricted" countries may make an individual ineligible for ESTA and, when requesting a visa, cause the applicant to be placed into automatic "Administrative Processing". If this is the case, the applicant will be vetted and the visa will be delayed, anywhere from two weeks to ten months is possible.

H-1B Visa as a Work Permit

For citizens of an EU member state coming to the United States to work, there are other non-immigrant visa classifications that, assuming that certain prerequisites are satisfied, may allow them to work in the United States. The application and processing time for these visas, however, is considerably longer than for an ESTA or a B-1 visa. The article entitled US Visa Options for Foreign Businesses and Entrepreneurs — E and L Visas on page

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32 of this Newsletter, discusses the E1/2 and L-1 visas. Other options, however, are available.

The ultimate non-immigrant professional classification is the H-1B visa. This visa allows foreign professionals to work in the United States. Unfortunately, this visa category brings with itself a myriad of hurdles to overcome. First, it is a numerus clausus classification. Every year there are more applications than visas available; accordingly, approximately 40% to 50% of H-1B petitions are returned due to lack of availability, meaning an H-1B visa is not available for these professionals.

Therefore, if an employer seeks to bring a foreign professional employee to the United States immediately, this will not be possible with an H-1B visa as the maximum number of visas issued will often already have been exhausted. Also, to obtain an H-1B visa one must evidence that he is a professional that is going to perform a professional job (specialty occupation) in a field coinciding with his college degree. Although there has been much litigation regarding this last issue, USCIS holds tight to its point of view. In real life, many businesspeople either do not have the equivalent of a US degree or have a degree in a field not matching the position at issue. Even if the applicant does have such a degree, it has become increasingly difficult to prove that certain professional occupations, such as engineering or accounting, are indeed professional specialty occupations. As a result, employees seeking to work in the United States on an H-1B should be prepared for a relatively expensive, uncertain, and long processing time.

B-1 in Lieu of an H-1B Visa

Employees may be able to overcome the lack of H-1B visas by applying for a B-1 in lieu of H-1B visa. Here again, however, we face the issue of a college degree in a specialty occupation. The advantage of a B-1 in lieu of an H-1B visa over the H-1B visa is that there is no quota for the former.

It is worth keeping in mind that the B-1 in lieu of an H-1B visa is a "mutt" of a classification – it has some of the characteristics of a B-1 visa and some of the characteristics of an H-1B visa.

An employee with a B-1 in lieu of an H-1B visa can stay in the United States only for up to six months and must be paid by the foreign company in the foreign country. The employee may, however, engage in hands-on active work at the US location. Another distinct advantage of a B-1 in lieu of an H-1B visa is that the processing is done directly at the US Consulate in the foreign country. This means the applicant does not need to file a petition with USCIS, which is a great advantage from a timing perspective.

Many consular officers, unfortunately, are not very familiar with the B-1 in lieu of an H-1B visa classification. Therefore, the request needs to be well documented and the applicant needs to be prepared to "educate" the interviewer at the US Consulate.

O-1 Visa

If the employee does not qualify for an E-1/2 or for an L-1A/B visa (discussed in US Visa Options for Foreign Businesses and Entrepreneurs – E and L Visas on page 32 of this Newsletter) or an H-1B visa, the applicant may be eligible for an O-1 visa. An O-1 classification is for people with extraordinary abilities in business or the sciences. Though there are guidelines for an O-1 visa, the Immigration and Nationality Act does not define the extent of the extraordinary ability necessary. An O-1 visa application is filed with the USCIS in the United States. The procedure is quite expensive, time-consuming, and USCIS Adjudicating Officers are given great leeway with their decision making.

Lack of Treaty Between United States and European Union

Since there is no treaty for the movement of people between the United States and the European Union, EU nationals have fewer options available than do Canadians and Mexicans. Accordingly, a good practice is to ask clients whether the individual that is to go to the United States may have dual citizenship with Canada or Mexico. If so, a Trade Agreement (TN) visa classification could be obtained, which provides a lot of flexibility. Unfortunately, most clients do not have this option available to them.

After reviewing all of these classifications, we conclude that it may be easier to bring personnel who are already

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US Permanent Residents (Green Card Holders) to the United States, even if the personnel is needed only for a limited time. This, however, brings with it a lot of other issues that are beyond the scope of this article.

[1] *This is the only advantage citizens of EU member states have over citizens of many other countries.*

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U.S. Visa Options for Foreign Businesses and Entrepreneurs – E and L Visas

By Mohammad Ali Syed - Offit Kurman (Bethesda MD) at mo.syed@offitkurman.com

This article will discuss the L intra-company transfer visa and the E treaty investor and trader visa. Existing US businesses and startups can employ executives, managers, and other employees of foreign affiliates, regardless of nationality, under the L visa category. The E visa category, however, is available to businesses and nationals only of certain countries that have treaties with the United States.

What you Need to Know About the L-1 Intra-Company Transfer Visa

The L-1 is a non-immigrant, intra-company transferee visa classification. The L-1 visa permits key professional employees to transfer from an overseas office to an existing office of a parent, branch, affiliate, or subsidiary of the same company in the United States or, alternatively, to set up a new office. While the L-1A allows for a US employer to transfer an executive or manager, the L-1B is for an employee with specialized knowledge. Title 8, Code of Federal Regulations defines intra-company transferees as individuals who have been employed abroad continuously for one year (by the qualifying entity) during the three years preceding their L-1 application and admission into the United States. Individuals who take brief trips for business or pleasure (on B-1 or B-2 visas) will not be viewed as interrupting their one year of continuous employment.

Requirements for Eligibility for L-Visa

1. The employee must have worked for at least one year from the preceding three years prior to filing the application and the date that he seeks to enter the United States to work in the same or similar capacity as was done abroad.

2. A qualifying relationship between the foreign company and the US company, meaning that there needs to be common ownership and control.

3. If coming to the United States to set up a new office, evidence will also be required to show the establishment of new premises, for example, a lease for office space, sales contracts, and copies of applicable business permits etc.

For larger employers, prior approval may already have been obtained under what is known as a "Blanket L" petition. This permits multiple key personnel to apply for L-1 status without waiting for individual USCIS petition approval.

To obtain a blanket petition, the company must satisfy the following requirements:

- Have transferred at least ten L-1 managers, executives, or specialized knowledge employees to the United States in the previous twelve months;
- Have US subsidiaries and affiliates with combined annual sales of at least US $25 million; or
- Have a US workforce of at least 1,000 employees.

L-1 Visa Terms

Family Members: The spouse and unmarried children under 21 years of age may accompany the transferring employee to the United States. Such family members may seek admission in L-2 non-immigrant classification and, if approved, will generally be granted the same period of stay as the employee. They may also bring domestic workers with them as B-1 visa domestic workers. A spouse may apply for employment authorization.

Period of Stay: Qualified employees entering the United States to establish a new office will be allowed a maximum initial stay of one year. All other qualified employees will be allowed a maximum initial stay of three years. For all L-1A employees, requests for extension of stay may be granted in increments of up to an additional two years until the employee has reached the maximum limit of seven years.

Restrictions: The employee must work solely for the US employer during the US stay.

Examples:

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- A foreign law firm wishing to set up offices in the United States may use the L visa category to set up its new US offices. The offices do not need to be staffed by US lawyers as long as they are not providing legal services and are engaged only in marketing activities.

- Manufacturers of wine who sell wine to the US market may set up marketing offices in the United States.

- Tech firms who develop IT products and service US customers.

What You Need to Know About the E Treaty-Trader Visa

E-1 Treaty-Trader Visa

The E-1 Treaty Trader visa is a non-immigrant classification that allows foreign nationals of a treaty-trader country to be admitted into the United States for the purpose of engaging in international trade. Such a country must maintain a treaty of commerce with the United States; citizens of nearly each EU member state (see below) are eligible for an E-1 and/or an E-2 visa. This visa is available to owners or employees of a qualifying organization or company who will be engaged in international trade. Trade includes the physical movement of goods or transportation as well as non-physical services (such as banking, insurance, tourism, journalism, or technology).

E-1 Requirements for Eligibility

If an owner applies for an E-1 visa, he must satisfy the following requirements:

1. Be a national of a qualifying treaty country;

2. Demonstrate that he intends to engage in "substantial trade." The United States Citizenship and Immigration Services (USCIS) sets forth that this generally refers to "the continuous flow of sizable international trade items, involving numerous transactions over time";

3. Perform "principle trade," meaning at least half of the trade is between the United States and the designated treaty country; and

4. Intend to return to his home country at the end of the visa period.

If an employee applies for an E-1 visa, he must satisfy the following requirements:

1. Have the same nationality of the principal employer, while the principal employer must have the nationality of a qualifying treaty country;

2. Meet the definition of an "employee";

3. Have a supervisory or managerial role that requires specialized knowledge or skills; and

4. Be in the United States on a current E-1 visa or, if applying from outside the United States, prove that he can meet the E-1 qualifications.

E-1 Visa Terms

Family Members: The spouse and unmarried children under 21 years of age may be granted E-1 non-immigrant visas as dependents of the treaty trader or employee. A spouse may apply for employment authorization. Such family members do not have to have the same nationality as the qualifying treaty country. They may also bring domestic workers with them as B-1 visa domestic workers.

Period of stay: Holders of an E-1 visa may stay in the United States for two years. Extensions beyond two years are allowed with no limit to the number of extensions as long as the treaty trader or employee continues to satisfy the requirements for an E-1 visa, including proof of intent to return to his home country at the end of the visa period. An E-1 visa holder may travel outside of the United States, and will likely be granted a two-year extension upon his readmission into the United States. This means, however, that family members as dependents of the treaty trader or employee must also travel abroad and re-enter the United States for an automatic two-year extension.

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Restrictions: The E-1 visa holder may work only in the area for which he has been approved at the time of the grant of the classification. It may be possible, however, for the holder of an E-1 visa to work for his qualifying employer's parent company as long as there is an established relationship between the organizations. The employment must be either in an executive, supervisory, or essential skills capacity, and the terms of the employment may not otherwise have been changed.

E-2 Treaty Investor Visa

An alternative to the E-1 Treaty Trader visa is the E-2 Treaty Investor visa. The E-2 visa may be an option for those with significant funds to invest who are from a treaty trader country.

There are two ways to apply for an E-2 Treaty Investor Visa. If the applicant is in the United States on another status, he can file a petition with USCIS to change his status to an E-2 visa. The applicant must file an I-129 form, complete the E-2 visa supplement, and provide all documentation required to support the E-2 visa application. If the petition is granted, the applicant will be in E-2 status, which typically lasts for two years. To change the status of any dependents who are also in the United States, they must file an I-539 form.

If an individual wishes to petition for an E-2 visa, and is outside of the United States, the applicant will need to apply through a US Consulate. This will require filing Form DS-160 online. The applicant will also need to complete a DS-156E supplement. Instructions on how to complete these forms are outlined on the website of the relevant US Consulate. Documentation to include is typically the same as would be required when filing from within the United States, however, the applicant should still check with the respective US Consulate to determine whether additional documents are required. Visas are typically granted between two and five years and allows the holder of the visa to leave and enter the United States for travel. If the E-2 visa holder has dependents, they must file separate DS-160 applications.

E-2 Requirements for Eligibility

1. The applicant must be a citizen of a treaty country. This visa is available only to individuals from countries with whom the United States has a treaty agreement. Visit the Department of State website at https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/fees/treaty.html to view the complete list.

2. The applicant must have invested, or be in the process of investing, funds. There are three requirements for this investment criteria:

- The applicant must legitimately possess and control the funds. The funds must have been obtained lawfully, meaning it must be shown how the funds were acquired, e.g., earned or a gift. Some examples of evidence include tax returns, bank statements, documents to support the source of the funds (e.g. proof of sale if the applicant sold property) investment accounts, etc. This may be challenging in some countries that do not have records readily available.

- All invested funds must be subject to risk and loss. This provides proof that the funds are irrevocably committed. At-risk money includes credit card, debit, or other loans as long as the debts are not secured by business assets.

- The applicant must be close to starting a business. Although no work can be done prior to the visa being approved, the business should be in the "starting blocks". This may include a signed lease, a business bank account, an established website, and having purchased everything needed to start the business.

3. The applicant must be in a position to develop and direct the business. This also means that the applicant must have the appropriate education or experience necessary for the position and business.

4. The investment must be substantial. The U.S. Citizenship and Immigration Services (USCIS) has not defined "substantial" and there is no set minimum or maximum amount. Whether an investment is truly "substantial" depends on several variables, including the total capital of investment in relation to the total amount required to set up the business. Only working capital (not cash sitting idle in a bank account) will be considered by the USCIS as part of an investment.

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5. The investment and business may not be marginal; meaning, the business may not be only for the applicant and family to subside. There must be a business plan in place to show growth over a five-year period or that employees will be hired.

6. The applicant must intend to return to his home country once the visa expires. To document this, provide a signed affidavit stating such. The applicant does not need to show ties to his home country.

E-2 Visa Terms

Family Members: E-2 derivative visas are available for the spouse and children under 21 of the E-2 investor. Children may attend school in the United States, but unlike the spouse, they are not authorized to work. Spouses are eligible to work by applying for an Employment Authorization Document (EAD). They may also bring domestic workers with them as B-1 visa domestic workers.

Period of Stay: If the applicant received E-2 status through a change of status, it will generally last for two years. If processed at a US Consulate, the visa may be for up to five years.

Restrictions: A treaty investor or employee may work only in the activity for which he was approved at the time the classification was granted.

Examples

Following the previous approval of an E-2 applicant by the author of this article, a local Korean restaurant business desired to add a new investor. The initial E-2 applicant was a student at a local business school who had worked for her family's restaurant business in South Korea. She wanted to establish her own restaurant in the United States. She also wanted to bring an essential employee to work in her restaurant. Her business was successful for three years, so she was interested in adding a second investor. She returned to the same attorney, the author of this article, as she had been successful with the initial application. He was able to obtain an E-2 visa for the new investor. With their business expanding, Washington DC will be able to sample a wide range of Korean delights!

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