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Employees working in India? Avoid common pitfalls

Business in India is booming but Indian immigration laws and the visa system are struggling to keep up

By Sergio Karas and Shalini Agarwal

The current economic boom in India has significantly increased the number of business personnel traveling into and out of the country. Indian immigration laws are struggling to keep up with the increased movement of human resources through its borders. Canadian companies doing business in India must exercise caution to ensure their personnel do not fall into a bureaucratic quagmire.

Foreign nationals require valid visas to both enter and exit India, which can be obtained from an Indian consulate or relevant Indian foreign mission in the country of their residence. There are no provisions for issuing visas to foreign nationals upon arrival. For the purposes of carrying out business or employment, foreigners have the option to apply for an employment or business visa or, if they qualify, a card identifying overseas citizenship or Indian origin.

Employment or business visa – which is the correct permit?

Employment and business visas may be subject to conditions the Indian government thinks fit to allow entrance to the country and may be varied or cancelled. Written permission from the government and the local authority is required before engaging in employment in any public sector undertaking, including the supply of electricity, power, water and petroleum products.

Business visas are generally granted for a period of three or six months. However, multiple-entry business visas valid for up to two years may be granted to technicians or experts going to India under bilateral agreements or joint venture projects which enjoy prior government approval. A letter from the sponsoring organization indicating the nature of the applicant's business, probable duration of the stay, validity of visa required, places and organizations to be visited and a guarantee to meet maintenance expenses and all other conditions, must accompany the application.

Employment visas are initially granted for one year but can be extended in India to match the period of the employee's contract. Applications must be submitted with a copy of the employment contract, proof of the company's registration under the relevant provisions of Indian legislation and a letter from the employer indicating the nature of the position, salary structure and duration of employment. Various registration formalities need to be completed by the employee upon arrival in India, which are typically done with the local foreign registration office.

OCI versus PIO

India allows certain persons of Indian origin to apply for a form of dual citizenship known as "overseas citizenship of India" (OCI). This is now extended to most countries. Persons of Indian origin (PIO) other than those who migrated from Pakistan and Bangladesh are eligible to apply for OCI and are granted a lifelong multiple entry visa that exempts the holder from the requirement of registration for any length of stay. OCIs are equal to non-resident Indians except for the rights to hold government positions and to vote. Foreign nationals must hold their passport along with an additional OCI card which they must present upon entry into India.

Persons of Indian origin up to the fourth generation (great-grandparents from India) everywhere, except for a few specified countries, are eligible to apply for a PIO card. This permit is also available to the spouse of a PIO. The card is generally valid for a period of 15 years from the date of issue subject to the validity of the applicant's passport. A PIO cardholder is required to register with the local police authority if his stay exceeds 180 days in India on any single visit. Obtaining the PIO card requires submission of all relevant documents substantiating the applicant's claim as a person of Indian origin.

The advantages of OCIs exceed those of PIOs. However, there is a quota on the number of applications that can be received by the authorities each day for OCI which may make it difficult to obtain.

Common mistakes by foreign workers in India

Registration. Foreign citizens visiting India and planning to stay more than 180 days are required to register within 14 days

of arrival with the local foreigners regional registration office (FRRO) responsible for the area where they will be staying. The FRRO maintains offices in New Delhi, Mumbai, Chennai, Kolkata and Amritsar. In smaller cities and towns, the local police headquarters normally perform this function. Registration procedures can be cumbersome if formalities are not observed in a timely manner, as local officers have a great deal of discretion. Often, the local FRRO may refer applicants to the Ministry of Home Affairs, depending on the nature of the applicant's query or requirement. Hence, adequate time should be allowed when approaching the local FRRO to complete registrations. Upon departure from India a certificate of registration issued by the FRRO must be surrendered to the registration officer where the visitor is registered, the office from where the visitor intends to depart, or the immigration officer at the port or checkpoint of exit from India.

Taxation. Foreigners and non-resident Indians visiting India should ensure compliance with the income tax provisions. A person is deemed to be a resident for tax purposes if he is in India for an aggregate period of 182 days or more in a year or was in India for 365 days or more within the four previous years and is in India in for an aggregate period of 60 days or more in that year. Thus, where the period of stay exceeds the prescribed number of days, the individual must ensure compliance with tax laws.

Extension and conversion. The common misconception is visa categories can be converted with ease as there are no legal restrictions. But the reality is quite different. When entering India on a specific visa, individuals should be not assume they can easily convert from one visa category to another. Some conversions are almost impossible to achieve. Also, extensions of existing employment visas can be applied for, but these too can take time and are at the discretion of local officials. In cases where background checks are conducted, extension of employment visas can take up to three months, as opposed to the normal period of between three to six weeks.

This is a brief summary of some of the most common errors made by foreign companies when sending employees to India. While the process may seem complex, the key to navigating the system is engaging competent local counsel who will assist through each step and ensure a smooth transition of the employee into the new workplace and country.

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