

IMMIGRATION AND NATIONALITY LAW



INTERNATIONAL BAR ASSOCIATION LEGAL PRACTICE DIVISION

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This Newsletter is intended to provide general information of interest to lawyers involved in immigration and nationality law.

Views expressed are not necessarily those of the International Bar Association.

FROM THE CO-CHAIRS

Welcoming our new Co-Chairs

Scott Borene

*Borene Law Firm
Minneapolis, Minnesota
sborene@borene.com*

Howard Greenberg

*Greenberg Turner
Toronto, Ontario
hgreenberg@gt-hrlaw.com*

Co-Chairs, IBA Immigration and Nationality Law Committee

Many of our committee's members were in Prague last September to attend a truly diverse and informative programme which covered mobility issues involving the European Union, as well as the rules regulating the movement of doctors, nurses and scientists.

This year's programme in Chicago will be the first to provide joint programming with the Employment and Industrial Relations Law Committee of our Human Resources Section. The session, 'At the crossroads of immigration law and employment law – cross-border employment issues', will explore overlapping issues which face both employer and immigration lawyers. The complex rules governing the entry of engineers will be addressed, as will immigration treaties and nationality-based work visas.

We are encouraged by the increasing membership in our section and the enthusiastic participation of our members. As this is the last year of the current executive, we welcome as our incoming Co-Chairs of the committee, Gabrielle Buckley and Sergio Karas.

We look forward to the next annual meeting in Singapore.

Contributions to this Newsletter are always welcome.

If you wish to be a contributor for your country or region and can provide updates twice a year, please contact the Editor at the address below:

Urs Haegi
VISCHER

Schnetzengasse 1, Postfach 8032, Zurich, Switzerland
Tel: +41 (1) 254 3400. Fax: +41 (1) 254 3410
uhaegi@vischer.com

International Bar Association

10th Floor, 1 Stephen Street, London W1T 1AT, United Kingdom
Tel: +44 (0)20 7691 6868. Fax: +44 (0)20 7691 6544
www.ibanet.org

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COMMITTEE OFFICERS

Co-Chairs



Scott Borene
Borene Law Firm
4602 IDS Centre
Minneapolis
Minnesota 55402, USA
Tel: +1 (612) 321 0082
Fax: +1 (612) 332 8368
sborene@borene.com



Howard Greenberg
Greenberg Turner
401 Bay Street Suite 3000
Toronto
Ontario M5H 2Y4, Canada
Tel: +1 (416) 943 0288
Fax: +1 (416) 943 0289
hgreenberg@gt-hrlaw.com

Senior Vice-Chair



David L Bitel
Parish Patience Immigration
Level 1, 338 Pitt Street
State Street Centre
Sydney, NSW 2000, Australia
Tel: +61 (2) 9286 8700
Fax: +61 (2) 9283 3323
dbitel@ppilaw.com

Vice-Chair



Sergio Ruben Karas
Karas & Associates
1 First Canadian Place
100 King Street West 2640
Toronto ON M5X 1E4, Canada
Tel: +1 (416) 506 1800
Fax: +1 (413) 506 1305
karas@karas.ca

Vice-Chair



Ted Badoux
Everaert Advocaten
Weteringschans 28
1017 SG Amsterdam
The Netherlands
Tel: +31 (20) 524 7474
Fax: +31 (20) 524 7475
badoux@everaert.nl

Secretary



Gabrielle Buckley
Vedder Price Kaufman & Kammholz
222 North LaSalle Street
Suite 2600, Chicago
Illinois 60601, USA
Tel: +1 (312) 609 7626
Fax: +1 (312) 609 5005
gbuckley@vedderprice.com

Newsletter Editor



Urs Haegi
VISCHER
Schnezzengasse 1
Postfach 8032, Zurich, Switzerland
Tel: +41 (1) 254 3400
Fax: +41 (1) 254 3410
uhaegi@vischer.com

Website Coordinator



Prashant Ajmera
Prashant Ajmera & Associates
185 Braebrook Ave, Point Claire, QC
H9R 1V4, Canada
Tel: +1 (514) 697 1597
Fax: +1 (514) 697 9279
pajmera@canadaimmigrationvisa.com

LPD Administrator

Kerri Deegan, lpd@int-bar.org

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CHICAGO 2006

International Bar Association Conference 17-22 September



The Immigration and Nationality Law Committee is planning to hold the following sessions at Chicago 17-22 September 2006.

Engineers and scientists without borders

Session Chair

Robert Walsh *Fragomen Australia, Canberra, Australian Capital Territory, Australia*

A comparative review of temporary and permanent work visa options for engineers and scientists in multiple countries.

Speakers

Gary Endelman *BP America, Houston, Texas, USA*

Catherine Sas *Catherine Sas Law Corporation, Vancouver, British Columbia, Canada*

Ben Sheldrick *Magrath & Co, London, England*

Bettina Offer *Offer & Mastmann, Frankfurt am Main, Germany*

Maria Luisa Soter *Veirano e Advogados Associados, Rio de Janeiro, Brazil*

1400 – 1700 TUESDAY

Room S501d, McCormick Place Convention Center

Immigration treaties and nationality-based work visas

Session Chair

Gregory Siskind *Siskind Susser, Memphis, Tennessee, USA*

A comparative review of work visa options based on bilateral or multilateral treaties and other types of special nationality-based cross-border employment permission.

Speakers

Laura Devine *Laura Devine Solicitors, London, England*

Heather Segal *Guberman Garson Bush, Toronto, Ontario, Canada*

Henry Hachez *Loyens, Brussels, Belgium*

Timur Beslangurov *Vista Foreign Business Support, Moscow, Russia*

Shalini Agarwal *ALMT Legal, Mumbai, India*

Arnold Conyer *Diamond Peisah, Sydney, New South Wales, Australia*

Canos Iturregui *US Citizenship & Immigration Services, Washington DC, USA*

Scott D Pollock *Scott D Pollock & Associates PC, Chicago, Illinois, USA*

0930 – 1230 THURSDAY

Room S501a, McCormick Place Convention Center

Global business immigration update

Session Chair

Sergio Karas *Karas & Associates, Toronto, Ontario, Canada; Vice-Chair, Immigration and Nationality Law*

A global survey of the latest changes in business immigration policies and practices in leading work visa destination countries including Europe, the Americas and the Asia Pacific region.

Speakers

Nadine Owen *Cameron McKenna, London, England*

Kenneth Ing *Clark Wilson LLP, Vancouver, British Columbia, Canada*

Camila Tsu *Emdoc MRS, São Paulo, Brazil*

Guenther Maevers *Mutze Korsch, Cologne, Germany*

Carlina Tapia-Ruano *Tapia-Ruano & Gunn, Chicago, Illinois, USA*

Ed Lehmann *Lehmann Lee & Xu, Beijing, China*

1400 – 1700 THURSDAY

Room S501d, McCormick Place Convention Center

Human Resources Section

The globetrotting employee – legal and practical challenges for multi-national companies

Managing global mobility in multi-national companies

Session Co-Chairs

Els de Wind *Van Doorne, Amsterdam, the Netherlands;*

Publications Officer, Employment and Industrial Relations Law

Gerlind Wisskirchen *CMS Hasche Sigle, Cologne, Germany;*

Publications Officer, Employment and Industrial Relations Law

Barry Mordsley *Salans, London, England; Senior Vice-Chair,*

Discrimination and Gender Equality

This programme will focus on the practical and legal challenges in encouraging and managing global mobility of employees. During the first session a panel of experienced human resources directors and in-house legal counsel of multi-national companies will share their experiences. The discussion will include their perspectives on best strategies, as well as the obstacles they face in encouraging an increasing workforce to be mobile around the globe.

Panellists

Manual Cuevas-Trisán *Motorola, Plantation, Florida, USA*

Kate D'Camp *Cisco Systems Inc, San José, California, USA*

Roger Williams *British Oxygen Company, Surrey, England*

Kathy Baker *Wolters Kluwer, Amsterdam, the Netherlands*

Belkis Muldoon *Littler Mendelson, Chicago, Illinois, USA*

Cross-border employment, discrimination and immigration law issues

During the second panel discussion employment attorneys from different regions in the world will discuss the legal impediments related to cross-border assignments touching on employment, discrimination and immigration aspects.

Panellists

Vicente Calle *Garrigues, Madrid, Spain*

Isabelle Wan *Transasian Lawyers, Beijing, China*

Juan Carlos Pró-Risquez *Macleod Dixon, Caracas, Venezuela*

Johan Lubbe *Jackson Lewis, White Plains, New York, USA*

Graeme Kirk *Gross & Co, Suffolk, England; LPD Council Member*

Angelo A Paparelli *Paparelli & Partners LLP, Irvine, California, USA*

Continued overleaf

The life cycle of international employment arrangements

Session Chair

Gabrielle Buckley *Vedder Price Kaufman & Kammholz, Chicago, Illinois, USA; Secretary, Immigration and Nationality Law*

This programme will focus on the 'life cycle' of international employment, practically exploring issues which arise from pre-recruitment to termination. Sample cases will be analysed and discussed.

The first panel will address issues which arise pre-hire and throughout the hiring process for global employers, including identifying appropriate global employees; defining 'employment'; recruitment 'dos and don'ts' and timing issues.

Panellists

Donald Dowling *Proskauer Rose LLP, New York, USA*

Richard Martin *Simpson Grierson, Auckland, New Zealand*

Urs Haegi *VISCHER, Zurich, Switzerland; Newsletter Editor, Immigration and Nationality Law*

Yusra Siddiquee *Ogilvy Renault LLP, Toronto, Notario, Canada*

The second panel will present experts from around the world who will discuss employer obligations during the period of employment, and issues relating to termination of employment of expatriates, including the right of the employee to remain in the country, period of notice required and other matters.

Panellists

Brian Arbetter *Baker & McKenzie, Chicago, Illinois, USA*

Ted Badoux *Everaert Advocaten, Amsterdam, the Netherlands;*

Vice-Chair, Immigration and Nationality Law

Yoshio Shimoda *ILS Shimoda Office, Tokyo, Japan*

Tsvi Kan-Tor *Kan-Tor & Schwartz, Ramat Gan, Israel*

0930 – 1700 MONDAY

Room S401d, McCormick Place Convention Center



NEW!
Privilege and Confidentiality: An International Handbook

Editors: Markus Koehnen, Marc Russenberger and Erin Cowling

Privilege and Confidentiality: An International Handbook canvasses rules across 18 common and civil law jurisdictions. A handy, desktop manual, it offers those who deal with different jurisdictions a quick and easy introduction to the topic. Chapters follow a consistent template in addressing issues, making cross-referencing between jurisdictions quick and easy. Topics covered include the scope of privilege/confidentiality in each jurisdiction, how issues commonly arise, particular issues facing internal counsel, and how to protect the contents of documents that are disclosed in a legal or investigative process.

Topics covered include:

- The scope of privilege/confidentiality in each jurisdiction
- How issues commonly arise
- The role of economics in the enforcement of antitrust
- Particular issues facing internal counsel
- How to protect the contents of documents that are disclosed in a legal or investigative process

Price:

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International Bar Association, 10th Floor, 1 Stephen Street, London W1T 1AT, United Kingdom
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Relocation and immigration procedures in Italy

Giovanni Papperini

Studio Papperini, Rome

g.papperini@studiopapperini.it

The relocation process (home hunting, settling in, utilities connection, etc) involves a large interaction with immigration concerns (visa, permit to stay, registration at the City Records, etc).

In Italy, there can be considerable delays in obtaining basic papers in order to obtain other documents – particularly visas, permits to stay, and so on – for various reasons (inadequate comprehension of immigration regulations, which change very often; cultural comprehension difficulties among local immigration counsellors and multinational companies; human resources officers who live on the other side of the world; delays on the part of public offices, etc).

Italian bureaucracy does not always help these people, who very often run into hundreds of problems due to delays on the part of public authorities in issuing of documents necessary to obtain other certificates.

Visas and apartments on a lease

One cannot completely rely on achieving an entry visa – even for a big multinational company manager and his or her family – and, above all, one can never trust that a visa will be obtained within an exact number of months. If an Italian immigration counsellor assures someone of this, it means that he or she is not being honest. Therefore, expatriates should exercise great caution when signing a lease agreement, otherwise they risk paying several monthly rent instalments in vain when the apartment hasn't yet been taken by them.

Driving licences and permits to stay renewal

One must be careful to avoid the permit to stay renewal (which could require more than three months) taking place at the same time as the application submissions for documents that provide the possession of a valid permit to stay.

For instance, the driving licence: within one year of obtaining registration at the City Records in Italy, foreign citizens from countries for which conversion of a driving licence is not possible (eg, the USA) have to get an Italian driving licence. Please note: this can only be done if during this time the permit to stay has not expired.¹ It is therefore appropriate to take the driving test before the expiry of the permit to stay, even if one year has not elapsed since registration at the City Records.

Permit to stay, registration at the City Records and permit to drive in the city centre

In order to drive one's car in the centre of Italian cities such as Rome, one needs a permit to park or enter the 'Zone a Traffico Limitato' (areas of limited traffic). To achieve this document, one needs to have a legal registration at the City Records, transferring it from one's home country to the town where one relocates for work, however, before that, one must have a permit to stay, in order to apply for the permit in a timely manner and avoid collecting lots of traffic tickets.

In order to avoid or limit some of the difficulties mentioned above when expatriates come to Italy, it is advisable to use Italian consultants who can supply overall comprehensive advice on immigration and relocation (eg, assistance in signing the lease agreement and in the application for registration at the City Records, Health Service, etc).

Notes

¹ Italian Ministry of Transport, Circular Letter Prot. MOT3/1687/M352, 20 March 2006.

Guidelines for immigration lawyers: establishing a global immigration services delivery model

Scott J FitzGerald and Glenn Faulk

Fragomen Global Immigration Services LLC, Boston, Massachusetts

sfitzgerald@fragomen.com gfaulk@fragomen.com

Globalisation has resulted in a continued rise in the volume of international transfers of professional personnel. In addition, the recent substantial increase in the number of short-term international assignments poses significant challenges in administering global expatriate programmes, particularly from an immigration perspective. According to a recent worldwide survey,¹ today's global business demands have also created a new breed of expatriate, 'stealth expatriates', who commute frequently across borders with little or no concern for their immigration status, as well as business visitors who commonly overstay their visa status and/or perform duties as a visitor that clearly would otherwise require formal work authorisation.

This trend has created scepticism and suspicion by immigration officers towards foreign business visitors regarding the nature of their activities, which can result in a rather unwelcoming attitude towards legitimate applicants. In many countries, foreign business travellers and expatriates are subject to scrutiny even after successfully entering a country, throughout the course of their stay, and even upon departure. It is therefore more important than ever for international assignees to be fully prepared with all requisite documentation when entering their country of destination. Unfortunately, such foreign national assignees often fail to comply with local requirements, either because they are unaware of them, or because they feel that the requirements are overly burdensome, time-consuming and unnecessary.

Today, immigration lawyers are increasingly called upon to address and resolve these new challenges in a market that demands ever-quicker turnaround times. In addition, they are frequently asked to obtain visas, entry clearances, and work permits for expatriates relocating to countries with antiquated and even archaic immigration processes. From a global mobility perspective, these developments have resulted in the need for immigration lawyers to create truly global immigration solutions in order to work with both the client and, in many instances, the client's relocation, expatriate tax, and in-country destination services providers.

The following is an overview of some of the major issues facing immigration law practitioners who provide services in this area. While we cannot outline here every complexity and challenge faced in developing a global immigration service delivery model, this overview highlights basic client/supplier issues that should be addressed to ensure effective service delivery and overall client satisfaction in a complex environment.

Initial fact-gathering

Most multinational corporate clients are familiar with the general requirement that their employees comply with all immigration and labour laws in a particular destination country. However, there are many instances where assignees find themselves in possible violation of a host country's immigration laws. In order to develop a comprehensive and effective global immigration delivery system for a client, it is best to have an initial fact-gathering meeting in order to ascertain the client's overall needs and expectations. During the meeting, we recommend addressing the following questions:

- (a) What is the client's corporate structure and where are its facilities located?
- (b) What are the client's goals in relation to receiving global immigration services?
- (c) What type of systems will the immigration lawyer need to develop to effectively service the client within the client's corporate culture?
- (d) What is the actual volume of work?
- (e) How is the client's expatriate population comprised (eg numbers, locations, nationalities of assignees, assignees' levels of seniority)?
- (f) How sophisticated and realistic are the client's expectations in developing a workable global immigration strategy?
- (g) What are the payment terms and procedures for services rendered?

By eliciting such information and reviewing the new client's internal strengths and weaknesses, as well as candidly discussing the needs of its expatriate population in relation to the company's business needs, global immigration lawyers can determine the type of service delivery system that best supports the client. In

addition, by conducting this initial assessment, lawyers can better determine how to integrate the new client's business into the firm's existing team structure; as well as ascertain the level of internal IT infrastructure and interfacing required to efficiently service the volume of work. A careful initial assessment will greatly assist the lawyer in developing clearly defined process maps for the delivery of global immigration services to the client.

Direct services delivery

A key consideration for developing any service delivery model is determining which services you can provide directly to the client. Corporate clients who do not have their own internal immigration service delivery capability will typically require that their global immigration lawyers handle a range of business travel and work permit authorisation requirements in multiple destination countries. Immigration lawyers who are able to provide global immigration services internally are best positioned from both an economic perspective (ie directly controlling costs) and an efficiency perspective (ie directly controlling the quality of work product). However, it goes without saying that the establishment of offices in multiple jurisdictions is an expensive proposition.

Service delivery coordination

For practitioners who are limited in their ability to provide global immigration services directly across multiple countries, it is essential to establish a network of professional immigration vendors to observe clearly defined communication and work process protocols according to the scope of services agreed upon by the client. The coordination of global immigration services poses a wide range of issues that include, but are not limited to:

- (1) determining whether work will be initiated on an informal basis or according to a highly-structured protocol;
- (2) determining whether the global immigration lawyer will need to develop a client technology interface to support the volume of casework;
- (3) dividing up functional responsibility among your firm's team members and outside vendors, from handling day-to-day casework at a case coordination level, to the proper escalation protocol for problem cases, to overall client interface and management;
- (4) anticipating how to handle sudden fluctuations in case volume, based upon a client's business cycle; and
- (5) training and integration of your firm's account team with the client to ensure production of timely and accurate work.

'High-touch service', 'median service' and 'self-service' models

Maintaining consistently superior performance levels in managing a client's global immigration matters is essential to any effective immigration service delivery model. When requesting global immigration services, clients will generally have a predetermined idea as to the type of service delivery model they need. Of course, this 'predetermined idea' depends largely on a client's sophistication and experience in administering an effective global expatriate programme. Global immigration lawyers should work very closely with the client to determine which service model will *accurately* fit its immigration needs. Some of the general industry-standard service models are listed below.

'High-touch service' model

High-touch service models require the global immigration lawyer's total coordination of every aspect of an assignee's immigration case. Under this model, the global immigration lawyer is expected to be the primary point of contact for all communications between the assignee, client company and all service providers, and, where applicable, actively strategise time lines and filing requirements with minimal inconvenience to the assignee or client. This type of service model usually requires global immigration lawyers to:

- (i) draft or coordinate drafting of comprehensive instruction memoranda;
- (ii) draft or coordinate drafting of template letters of support;
- (iii) acquire or coordinate the acquisition of the principal applicant's and/or accompanying family member's civil documents (eg, civil birth and marriage certificates), if required as part of the immigration process;
- (iv) acquire or coordinate the acquisition of the sending and sponsoring of the company's support documents;
- (v) obtain or coordinate the procurement of apostilles, legalisations and translations of all work permit and visa application support documents, if required as part of the immigration process; and
- (vi) actively file or coordinate the filing of all immigration-related applications on behalf of the assignee (work/residence permit applications and consular visa applications, through to conclusion of all immigration formalities in the destination country).

'Median service' model

Median service models require a combination of attorney coordination of the overall case management, while allowing limited direct contact between the assignee and the global immigration lawyer's vendors in

the assignee's home and/or host countries. While the global immigration lawyer is responsible for overall coordination and management of the case, the in-country vendors can engage in direct contact with the assignee to strategise/conclude certain aspects of the immigration process. This type of service model usually requires immigration lawyers to:

- (i) coordinate the preparation of comprehensive instruction memoranda;
- (ii) if specifically requested by the client, assist in preparing template letters of support;
- (iii) acquire or coordinate the acquisition of the principal applicant's and/or accompanying family member's civil documents (eg, civil birth and marriage certificates), if required as part of the immigration process;
- (iv) acquire or coordinate the acquisition of the sending and sponsoring of the company's support documents;
- (v) obtain or coordinate the procurement of apostilles, legalisations, and translations of all work permit and visa application support documents, if required as part of the immigration process; and
- (vi) follow up with vendors (where relevant), the employer representative and the assignee to ensure that all immigration-related processes are filed and concluded in a timely fashion.

(c) *'Self-service' model*

Self-service models are generally reserved for multinational corporations with established internal immigration resources in a number of destination countries; and typically require only a low level of interaction or coordination from the global immigration firm. Direct involvement by the lawyer is needed only in cases where there are unforeseen problems, troubleshooting issues, or the need to escalate an assignee's concerns or complaints to the client company representative. This type of service model usually requires global immigration lawyers to:

- (i) direct the introduction of the assignee to the home and host country's immigration vendors;
- (ii) generate standardised case initiation memoranda for the assignee's instruction in navigating the immigration process; and
- (iii) monitor correspondence between the employee and the immigration vendors to ensure that the case is moving forward and all immigration formalities are concluded in a timely fashion.

Under this model, the assignee is usually responsible for gathering all of his/her professional support documentation, as well as any accompanying family member's support documentation, in addition to coordinating consular applications and concluding his/her immigration formalities with the destination country vendor. In addition, under this model, the home and host companies are generally accustomed to

coordinating the assembly and delivery of all requisite corporate support documentation to the appropriate vendors.

Billing issues/ethical concerns

Global immigration lawyers are also faced with the issue of how to invoice clients in a way that effectively and efficiently facilitates the issuance of accurate invoices to the client, while meeting the client's internal requirements relating to billing information and service. In addition, the field of global immigration presents a number of unique billing situations for the immigration lawyer. Immigration lawyers should be aware that, in addition to the logistics of getting paid for their services, there are issues relating to cash flow management, currency fluctuations and currency expatriation to consider when paying the lawyer's vendors in other countries, as well as the organisational challenges inherent in properly billing clients for multiple vendor services. Lastly, it is important for immigration lawyers to properly value their coordination services in accordance with the volume and complexity of the services involved.

Pricing of global immigration services can vary from flat fees for a predetermined, managed service model to charging hourly fees for providing ancillary ('out-of-scope') services or providing resolution to problem cases. In addition, lawyers should review, in detail, the client's policy for 'fronting' government application fees and other immigration-related charges, such as payment of third-party invoices (both of which can be extremely significant), and the approval protocol for charging additional fees outside the client's scope of service agreement. It is recommended to charge standard fees ('flat fees') for routine services, such as assembling and filing business visa and work/residence permit applications, while charging 'ancillary' fees (depending on the client's requested scope of services) for ancillary services (eg, obtaining family civil documents, apostilles, legalisations or translations for supporting documents).

It is essential that global immigration lawyers possess a complete and thorough understanding of the client's billing protocol in order to ensure timely payment of the lawyer's invoices, as well as to create a 'transparent' accounting system for the client. Examples of client billing requirements can vary according to the level of a client's internal accounting detail requested on each invoice. Most clients generally request that an immigration lawyer's invoice includes the company's internal billing codes for a particular matter, denotes the name of the company representative authorising the service, and references the employee's internal ID number on each invoice.

It is also the global immigration lawyer's responsibility to ensure, to the greatest extent possible, that its clients are apprised of how the lawyer's vendors

charge and expect to be paid for their services. While it is indeed difficult to monitor every vendor's invoice to ensure that charges are submitted in a fair and ethical manner, global immigration lawyers must establish clear guidelines with clients and vendors as to how to address such issues as fluctuating vendor costs due to currency inequities, and securing prior client approval for any 'out of scope' services being requested by the lawyer or by the lawyer's vendors.

Vendor relations

In order to avoid vendor relation difficulties, it is critical that the immigration lawyer establish clear and precise communication with each and every vendor, and properly inform them regarding each client's particular needs, service expectations and authorised scope of services. As clear communication on a global level can be quite difficult (particularly due to language differences, cultural differences and translation issues), we have found that non-technical, written communication is the most effective way to reduce potential misunderstandings with in-country service providers.

As clients view vendors as an extension of a global immigration lawyer's practice, lawyers should carefully evaluate vendors to ensure their knowledge and compliance with their country's immigration laws, the quality and scope of their provision of immigration services, and their commitment to compliance with standard business ethics and data privacy laws. In addition, the lawyer should ensure that a particular vendor's IT infrastructure can comfortably support the volume of work. In addition, it is important to confirm whether a vendor 'sub-contracts' their immigration work to unrelated third-party service providers. As it is not unusual for many large foreign law firms to outsource the filing of immigration papers with the migration authorities to a third-party supplier, it is the global lawyer's responsibility to ensure that a designated in-country vendor will assume ultimate accountability and responsibility for a third-party's service level and/or ethics.

Critical service management issues can arise if a client requests that the global immigration supplier utilises the client's pre-existing vendors in a particular country or countries. While this may not be a problem if the pre-existing vendor is reputable and the global immigration lawyer is familiar with the firm, there exists the real possibility that a lawyer will encounter a pre-existing vendor that is either resistant to a direct reporting structure into the client's global immigration services supplier, or is suspected to be acting in an illegal or unethical manner. Global immigration lawyers must establish with the client, at the beginning of the client/lawyer relationship, the appropriate protocol regarding when a pre-existing vendor must be replaced, and the conditions under which the pre-existing

vendor is responsible for ensuring that complete assignee files are transferred into its possession.

Technology

Cutting-edge technology is critical in servicing today's global immigration clients, as immigration lawyers are now expected to have the ability to interface directly with a client's HR database, its expatriate tax adviser's database, and the relocation supplier's database, as well as providing immediate and up-to-date reporting. Depending on the volume of casework that the corporate client has, immigration lawyers may also be required to implement web-based technology platforms for on-line submission of case initiations.

High volume corporate clients will also generally require that a global immigration supplier has a highly customised case management system to manage workflow, monitor case progress and track expiration dates. In some instances, clients may request that an immigration lawyer provide a 'portal' into the supplier's case management system, in order to view updated 'snapshots' of milestone events of assignees' cases. Global immigration case management systems should be equipped with the ability to input benchmarks for milestone events, create billable event 'markers' at the completion of certain milestones in a case, and schedule to-do's to remind team members of visa expiration dates or time-sensitive deadlines.

As no case management system is useful unless team members are properly trained on the system and educated as to the client's technology requirements, global immigration lawyers should establish case management 'best practice' protocols to ensure a high level standardisation of service delivery to the client. In addition, it is essential that all such case management systems have adequate and reliable back-up/disaster recovery systems, should there be temporary failure of the primary system.

Reporting

Reporting requirements for individual clients will vary according to the sophistication of the client's reporting needs. Global immigration lawyers should bear in mind that immigration case management technologies can provide numerous reporting features that provide quick and accurate reports, covering a wide variety of data fields in accordance with the client's reporting expectations. Suppliers should confirm with the client the type of reporting requirements and formats required, including whether the client expects to have the ability to produce ad-hoc case reports. Such reports would generally be generated from an available list of data fields via an online immigration portal, allowing a client to create its own case status reports. There should also be a discussion with the client regarding the potential charges for additional reporting services.

Service delivery metrics

In today's market, global immigration lawyers are increasingly evaluated by a client's service delivery metrics, which assess such variables as a service provider's response time, ability to provide timely milestone/benchmarking for key immigration events, and the accuracy of the information provided. Clients may also expect the global immigration attorneys to meet with them regularly to evaluate performance. Performance metrics can also be used by the client to establish payment guidelines and/or determine an attorney's financial penalties if certain performance metrics are not met.

In order to ensure a fair evaluation of service levels, immigration lawyers are advised to carefully review whether a client's expectations far exceed, or are in line with, the realities of managing global immigration casework. If a client's expectations are not reasonable, an attorney's careful and considerate enlightenment of the client may result in a client's re-evaluation and acceptance of service metrics that more accurately reflect service delivery realities.

Client satisfaction surveys

Client satisfaction surveys usually serve as an adjunct to service delivery metrics. It is very important that global immigration lawyers have the opportunity, if possible, to review with the client how such surveys are worded, along with at what point in the process such a survey is given to an assignee to complete. Typically, such surveys are distributed and administered either by the client's own internal quality control team, the lawyers themselves, or by an outside independent survey firm.

Careful consideration should be given to whether immigration services are combined in the survey with other unrelated services, as an immigration lawyer's score may unfairly suffer due to the poor performance of an unrelated services supplier (eg, because of goods damaged in a move). In addition, it is best to analyse how a survey is worded, as ambiguous or open-ended questions may not compel the assignee to provide a direct and accurate response. Survey questions that are laden with industry-specific terms or highly technical language may lead to confusion for the assignee (eg 'Prior to the adjudication of your employment authorisation petition, did your immigration supplier provide timely instructions for consular processing of your visa application?'). Survey questions posed in this manner may result in the assignee electing not to answer the question, or to provide an answer that has no relevancy to the question posed.

Finally, it is critical to understand how a survey is scored and what averages or formulas are used to provide an accurate score. Immigration lawyers and clients should reach an agreement as to reasonable service level expectations, in order to determine which scores reflect poor, adequate and exceptional levels of

service, in addition to determining the minimum level of scoring required to meet a client's expectations and to avoid incurring penalties.

Ancillary services

Corporate clients expect their immigration attorneys to provide a comprehensive array of services that are ancillary to the actual completion of the work and residence permit application process. Such services are commonly referred to as 'out of scope' services. These services can range from procuring family civil documents, arranging for authentications of support documentation (eg, apostilles and consular legalisations), to preparing detailed advisory memorandums concerning a particular aspect of a country's immigration law, etc. The ability to directly provide or coordinate such ancillary services for a client is invaluable to having a well-rounded and marketable immigration practice.

Competing against in-house administration models

In recent years, as corporate expatriate programmes have become more diverse and specialised, a large number of multinational companies have outsourced their immigration needs to outside immigration attorneys. While many multinational corporations continue to internally administer their own global immigration programmes, by aggregating their knowledge base across multiple clients, global immigration lawyers can demonstrate a significant value-add to such potential clients. Specifically, this value-add will include, but is not limited to, the following:

- (a) ensuring the quality and consistency of a client's immigration representation and filings worldwide;
- (b) providing centralised collection and maintenance of worldwide immigration data;
- (c) tracking critical case data and updates for the client to ensure timely compliance with filing obligations;
- (d) monitoring regulatory changes affecting corporate immigration policies and implementing necessary changes to ensure compliance;
- (e) serving as a single resource for immigration advice in order to support a client's global immigration needs across different businesses and country jurisdictions; and
- (f) confirming the veracity of an in-country vendor's immigration advice if it is perceived to be questionable or unethical by the immigration lawyer or client.

In addition, as the consequences to assignees and corporate clients of non-compliance can be severe (eg, denial of the assignee's work permit/visa application, the exclusion or expulsion of an assignee from the host country, financial penalties on or immigration audits of the host company), global immigration lawyers are

clearly in an excellent position to effectively assist their corporate clients in maximising immigration compliance, which reduces corporate exposure and results in better overall management of a company's global expatriate programme.

VAT administration

Value Added Tax (VAT) and Goods & Services Tax (GST) include taxes that are applied to the supply of goods and services produced by a foreign national worker in a particular country. The administration of VAT and GST is best handled by a client's international tax adviser, as taxation of goods and services is determined according to each country's tax laws or by tax treaties negotiated between countries. Nonetheless, immigration lawyers who provide global services must be aware that VAT and GST taxes are required to be included in bills rendered for immigration services in certain jurisdictions.

Data privacy

With increased instances of 'identity theft' and heightened terrorism concerns, compliance with laws concerning the acquisition, storage and transmission of an individual's personally identifiable information and sensitive data is a primary concern for corporate clients transferring their employees around the world. Because every immigration matter involves the transfer of such information (eg, the data subject's residential address, nationality, race, passport number, etc) from the data subject to the immigration lawyer, these issues are particularly relevant.

Certain countries and regions have enacted stringent data privacy laws (eg, the EU Commission's Directive on Data Protection) which govern the appropriate procedures and handling of an individual's personal/sensitive information. As corporate clients are obliged to follow the guidelines established by data protection laws, it is imperative that global immigration lawyers are able to evidence internal procedures and standards that are compliant with applicable data protection laws, and observe relevant client privacy policies.

Therefore, the global immigration lawyer should develop an effective compliance process to facilitate acknowledgment that such data need be provided to facilitate the processing of the immigration matter. This can be handled very efficiently by obtaining specific acknowledgment of the global immigration supplier's privacy policy by the data subject, facilitated through the use of immigration portal technology.

Conclusion

In recent years, the world has changed significantly due to an aggressively competitive global economy and the rise of global terrorism. As a result, we have seen the

implementation of ever more draconian immigration laws and regulations in numerous countries around the world. These laws have made it ever more challenging for multinational corporations to facilitate the efficient short-term and long-term movement of their employees internationally, while ensuring complete compliance in this important area. In light of these complexities, many corporations have turned to external immigration lawyers to provide guidance in this regard. We hope that the information outlined here is helpful to such lawyers in their efforts to provide services in this exciting and ever-evolving area.

Notes

- 1 According to a recent study by Cendant Mobility as highlighted in 'In Search of Stealth', *The Economist*, 21 April 2005.

The UK's Civil Partnership Act 2004 and its application to non-British nationals

Shahram Taghavi

Laura Devine Solicitors, London

shahram.taghavi@lauradevine.com

The Civil Partnership Act 2004 ('the Act') came into force on 5 December 2005. In essence the Act will provide legal recognition for the relationships of same-sex couples, in line with some of the UK's EU partners.

The Act creates the new legal relationship of 'civil partnership', defined as a 'relationship between two people of the same sex'. Once entered into, a civil partnership continues – very much like a marriage – until either dissolution, annulment or the death of one of the 'civil partners'. A couple may enter into a civil partnership provided:

- (a) they are of the same sex;
- (b) neither of them is already in a civil relationship;
- (c) neither of them is lawfully married;
- (d) neither of them is under the age of 16;
- (e) they are not within 'prohibited degrees of relationship' (the Act sets out a full list of prohibited degrees of relationship).

Persons under 18 years of age must obtain the consent of an 'appropriate person' prior to registration (the Act contains a table of individuals who are deemed to be an 'appropriate person').

Entering into a civil partnership creates both responsibilities and obligations on the civil partner which impact upon a broad range of issues including recognition for immigration and nationality, which this article will focus on upon.

The following is a general summary of civil partnership law and procedure where one of the partners is 'subject to immigration control' in the UK. Further, although the law and procedure relating to civil partnership throughout the UK is broadly similar, the following is limited to England and Wales.

Entering a civil partnership while in the UK

The usual procedure for registration will be by what the Act defines as the 'standard procedure', consisting of a two-stage process:

- 1) the couple must first give notice of their proposed civil partnership to a 'registration authority' (a register office in the area of the local authority in which the relevant individual lives); and
- 2) they must register the civil partnership.

Notice of proposed civil partnership

Both partners must give notice to their respective registration authority of their intention to enter into a civil partnership. The notice sets out the name, address, age, nationality, marital or civil partnership status, occupation and intended venue for the civil partnership. Once notice is given, the information (excluding the address of the individual) is displayed at the relevant registry office for 15 days to provide an opportunity for objections to be made by the general public.

However, a person who is 'subject to immigration control' (defined as a person who is not an EEA national and who 'requires leave to enter or remain in the UK') can only give a notice of the proposed civil partnership if he or she fulfils, what is referred to in the Act as, the 'qualifying condition'.

The qualifying condition

Irrespective of whether or not one of the couple is 'subject to immigration control', a notice of proposed civil partnership includes a 'declaration' by the person giving the notice, confirming that there is no lawful hindrance or impediment to the proposed civil partnership. However, where one of the partners is subject to immigration control, the declaration must include an additional statement by that partner that he or she fulfils one of the qualifying conditions, namely, that he or she either:

- (a) has an entry clearance granted expressly for the purpose of enabling him to form a civil partnership in the UK; or
- (b) has the written permission of the Home Secretary to form a civil partnership in the UK (in the form of a certificate of approval from the Immigration and Nationality Directorate).

In addition, in 'subject to immigration control' cases the notice of proposed civil partnership can only be given to an exhaustive list of registration authorities who are permitted to receive notices in such cases. A Certificate of Approval will not usually be issued if the partner subject to immigration control has been granted leave to enter or remain for a period of six months or less, or if having been granted leave for a

period of more than six months, less than three months of that leave remains.

Entry clearance granted expressly for the purpose of enabling a civil partnership to be formed in the UK

Following the coming into force of the Act, the Immigration Rules were amended to permit individuals to enter the UK as 'proposed civil partners', namely as individuals who seek to enter the UK to form a civil partnership with their UK-based partners. Provided the couple can establish that they have met, intend to permanently live together as civil partners and can adequately accommodate and maintain themselves without recourse to public funds, entry clearance can be granted for six months to permit the non-UK based partner to enter the UK, enter into a civil partnership with the UK-based partner and apply for leave to remain.

Visitors seeking to enter the UK solely for the purposes of entering into a civil partnership

The immigration rules now permit two non-EEA nationals to be granted entry clearance for the limited purpose of temporarily entering the UK to form a civil partnership. In order to be granted entry clearance for this purpose, the applicants need to satisfy the entry clearance officer that they:

- (a) are genuinely seeking entry for a limited period and intend to leave the UK at the end of that period;
- (b) do not intend to take employment or study while in the UK;
- (c) can maintain and accommodate themselves while in the UK;
- (d) can meet the costs of their journey out of the UK;
- (e) intend to give notice of a civil partnership in the UK during the period for which entry is sought (a period not exceeding six months);
- (f) can, if required, produce satisfactory evidence of the arrangements for giving notice of the civil partnership.

Once entry clearance as a civil partnership visitor is granted, the couple can enter the UK and give notice of a proposed civil partnership without having to obtain a Certificate of Approval. At the end of their period of leave, they must depart from the UK.

Recognised 'overseas relationships'

Same-sex relationships registered outside of the UK may be recognised as civil partnerships in the UK in one of two ways. First, a relationship will automatically be recognised in the UK and treated as a civil partnership if the relationship and country are set out in the list of 'specified relationships' listed in the Act (for example *geregistreed partnerschap* in the

Netherlands). Alternatively, a relationship registered abroad can be recognised in the UK if it satisfies the 'general conditions', namely that:

- (a) the relationship is of indeterminate duration;
- (b) the effect of the registration was for the parties to be treated either as a couple or married; and
- (c) neither of the partners were in a similar relationship with, or married to, anyone else at the time of the registration of their relationship abroad.

Registration under the Act while outside the UK

Provisions are also made in the Act for a couple, at least one of whom has to be a UK national, to register a civil partnership at British Consulates, Embassies and High Commissions, provided:

- (a) the couple cannot, in the relevant country, enter into a relationship which would amount to an 'overseas relationship' for the purposes of the Act;
- (b) the authorities of the relevant country 'will not object to the registration'.

Leave to remain in the UK as the civil partner of a person settled in the UK

A person who has entered into a civil partnership while in the UK with a partner who is either a British citizen or who has indefinite leave to remain, can apply for leave to remain as the civil partner of that settled person provided:

- (a) the non-settled partner has leave to enter or remain in the UK at the time of the application for more than six months; and
- (b) the partners can accommodate and maintain themselves without recourse to public funds.

Successful applications will result in the grant of leave for two years, during which time the non-settled partner would be able to work but not have recourse to public funds. Provided the civil partnership is still in existence at the end of the probationary two-year period, and there is no foreseeable risk of future separation or recourse to public funds, the non-settled partner can apply for indefinite leave to remain at the end of the two-year period. Indefinite leave to remain can also be granted if the settled partner dies during the probationary two-year period or if the non-settled partner becomes a victim of domestic violence at the hands of the settled partner.

Immediate settlement following cohabitation outside the UK for four years

A civil partner who has lived for four years outside of the UK with a partner who either has the right of abode or who has indefinite leave to remain in the UK, can apply for entry clearance for an indefinite period to live with that partner. The usual requirements of

intention to live together and adequate maintenance and accommodation without recourse to public funds apply in such applications.

Non-EEA partners of EEA nationals

An EU directive (Directive 2004/58/EC), due to be implemented on 30 May 2006, will extend the definition of 'family member' for the purposes of EU freedom of movement to include 'a registered partnership'. Until then, non-EEA registered partners of EEA nationals exercising treaty rights in the UK can, under UK immigration law (as opposed to EU law),

apply to join their EEA partners. The non-EEA partner of a EEA national exercising treaty rights in the UK can apply to enter the UK as a proposed civil partner and, for the purposes of that application, the EEA partner will be treated as 'settled' in the UK.

The British Government declared that the Act was intended to pave the way for respect, recognition and justice for same-sex couples. Although it is a much-welcomed piece of legislation, the extent to which that statement will reflect the experiences of partners who are subject to immigration control in the UK remains to be seen, particularly in the case of those from developing countries.



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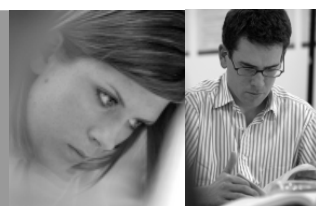
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Ireland's Green Card proposal

Jim Trueick

O'Donnell Sweeney, Dublin

jtrueick@odonnellsweeney.ie

The Irish Government is currently finalising a new 'Green Card' system which will grant skilled migrant workers and their families from outside the EU permanent residency in Ireland. The proposed Green Card system is part of a new employment permits regime which the government hopes to implement in 2006. The Employment Permits Bill which was introduced on 18 June 2005 is currently before the Irish Parliament.

The new Employment Permits system has three pillars:

- pillar one is the establishment for the first time in Ireland of a Green Card system;
- pillar two is a re-established intra-company transfer scheme for temporary transnational management transfers; and
- pillar three is a work permit scheme for a restricted list of occupations with an annual salary of up to €30,000 where the shortage is one of labour rather than skill.

The Green Card system will be based on two salary thresholds. Where the annual salary on offer exceeds €60,000 (excluding bonuses), the Green Card will be available for an extensive list of occupations. The Green Card will also be available for positions with a salary of between €30,000 and €60,000 but only in respect of a restricted number of occupations with skills shortages. At the second stage reading of the Employment Permits Bill 2005, the Minister for Enterprise Trade and Employment, Mr Michael Martin, stated that he chose to use salary thresholds in this way as, in many cases, 'high pay is a reasonable proxy for high skills' and also such salary levels indicate the ability of a worker to provide for their family without state assistance.

The Green Cards will be issued to highly qualified staff in ten sectors of the economy where labour shortages are deemed to exist:

- information and computer technology;
- healthcare;
- construction;
- biotechnology;
- engineering;
- financial services;
- transport;
- sales and marketing; and
- research and the skilled technical area.

These ten sectors of the economy were proposed to the Department of Enterprise Trade and Employment by Forfas and the Expert Group on Future Skills Needs,

which examined labour shortages throughout the economy and reported in October 2005. In their report the Expert Group noted that the Irish demand for unskilled labour can be adequately met from within the EEA, particularly from the recent EU accession countries. However, the Expert Group found that the pool of labour available from within the EEA at graduate level tightens significantly and concluded that Ireland must look outside the EEA to source highly qualified workers.

A worker's skills, qualifications and experience will be considered in allocating Green Cards. The Minister has stated that the number of Green Cards will be kept under constant review in order to ensure it is not excessive with regard to the small size of the Irish labour market. It is expected that approximately 5,000 people will come to Ireland under the new system each year.

Green Cards will be issued for two years initially, then on renewal for a further period of three years. Furthermore, there will be an immediate family unification for all holders of Green Cards, with spouses of Green Card holders enjoying an immediate right to work without the need to apply for a work permit. Holders of Green Cards, as with all other people legally resident in the state, will be able to apply for citizenship after five years of Irish residency.

The Green Card Scheme will replace the present Work Visa / Work Authorisation system, which currently meets the Irish need for skilled migrant workers. Green Cards will differ from the existing work permits in that they will be granted directly to the worker as opposed to the employer. Furthermore, the new system will allow holders full freedom to seek jobs within specified areas of the economy.

Developments in South Africa's Immigration Law

Gary S Eisenberg

Eisenberg & Associates, Cape Town

fermont@iafrica.com

The Immigration Amendment Act of 2004 came into operation on 1 July 2005. Since that time, the administrative efficiencies of the Department of Home Affairs have decreased markedly. This is in striking contrast to the expressions of 'optimal' efficiency promised by the Minister of Home Affairs, Mrs Nosiviwe Mapisa-Nqakula, during the launch of the National Immigration Branch almost one year ago.

The level of training of home affairs and foreign affairs officials employed at South African missions abroad is dismal and has had a catastrophic effect on the residence applications filed abroad. Both the Minister and the Director-General of the Department of Home Affairs remain in a state of quiet denial, the public hardly hearing a peep from either of these individuals. The Deputy Director-General, Mr Arthur Fraser, ex-Head of Intelligence Operations in the Western Cape province of South Africa, took his office, was suspended for a number of months (because of the death of an asylum seeker at Lindela internment camp), returned to office for a short time, and then in the blink of an eye disappeared again, this time pulled back into national intelligence operations. At the time of writing, he enjoys no replacement.

Immigration practitioners, as well as officials employed at regional and district offices of the Department of Home Affairs throughout South Africa, pinned their hopes for improvement in the level of service delivery on Mr Fraser – now an empty office chair remains!

On 14 December 2005, the Chairman of the Immigration Advisory Board, Professor Wilmot James – a respected academic – gave his address in Cape Town. In his speech he signalled various inefficiencies, lacunae in the amendments to the Immigration Act, the dysfunctional and somewhat paralysed employment-based immigration rules, and the reconfiguration in permanent residence processing. Professor James publicly announced that all of a sudden there exists a backlog of 17,000 applications for permanent residence application processing, as all applications have, since 1 June 2005, to make their way to a small committee at Home Affairs Headquarters in Pretoria to be adjudicated. At the conclusion of his speech, Professor James tendered his resignation.

Prior to 1 June 2005, permanent residence applications were taking one year or less for the rendering of decisions; now the length of time for this

purpose has increased to three or even four years, everything remaining equal. For a country in transition, dependent as it is on foreign direct investment, and specific skills filling deficits in the labour market left by departed well-educated South Africans, the extensive delays in permanent residence processing do not augur well for South Africa's economic development.

President Thabo Mbeki has throughout his term emphasised domestically and in the international arena that the age of the African Renaissance has arrived, which constitutes the true liberation of Africans. The core of the African Renaissance is good governance, transparency and accountability of government. The tangible decline in service delivery from the Department of Home Affairs does a grave injustice to what Mbeki is attempting to achieve at the macro-level, making his utterances nothing more than empty rhetoric.

We may, under these circumstances, expect the President's personal intervention to normalise the current strains within the Department of Home Affairs, or the immediate restructuring of the Department and the replacement of the current administrative black hole with substantive management and leadership skills.