

India

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PwC International Assignment Services Network

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Visa requirements for foreign nationals working on projects in India

In Brief

The Government of India has issued a letter dated August 20, 2009 through the Ministry of Commerce and Industry, Department of Industrial Policy and Promotion, clarifying Visa requirements in respect of foreign personnel executing project / contracts in India. A subsequent clarification has been issued by the Ministry of Home Affairs ("MHA") on September 25, 2009.

Foreign nationals working on projects/contracts in India require Employment Visas

- Foreign nationals executing projects/contracts in India will henceforth require Employment Visas ("EV(s)");
- All foreign nationals currently in India on Business Visas ("BV(s)") and engaged in project work or contract work, are now required to leave India upon expiry of their BVs or by October 31, 2009, whichever is earlier. No Visa extension will be granted in such cases. Such foreign nationals are required to obtain EVs from their country of origin in order to continue working on projects / contracts in India;
- The Ministry of External Affairs ("MEA") will advise the Indian Missions located in neighboring countries not to grant BVs to foreign nationals who come to India for execution of projects / contracts;
- All pending applications for BVs for projects/ contracts are to be returned to the applicants.

Issuance of Business Visas

BVs are to be issued only to foreign businessmen who want to visit India for any *bonafide* business purpose, such as the following:

- To establish an industrial / business venture;

- To explore possibilities of setting up an industrial business venture in India;
- To purchase / sell industrial products in India.

It has been reiterated by the MHA that the new clarifications apply only to foreign nationals who are on BVs but engaged in the execution of projects/ contracts in India. It has been clarified that BVs will continue to be issued to foreign nationals who visit India for *bonafide* business purposes such as mentioned above. In case of any doubt, the Foreigners Regional Registration Offices have been advised to refer the matter to Foreigners Division, MHA.

Issuance of Employment Visas

- EVs are to be issued only from the country of origin;
- EVs are to be granted to skilled or qualified professionals, or to a person engaged or appointed by an Indian company / organization / industry / undertaking on a contractual or employment basis at a senior level / as a technical expert / in a managerial position;
- EV requests for jobs for which a large number of qualified Indians are available should not be considered;
- EVs for clerical / routine / secretarial jobs will not be granted under any circumstances;
- The Indian Company / Organisation engaging such foreign nationals would be responsible for their conduct during their stay in India and also be responsible for their departure from India upon expiry of their EV.

Issuance of Employment visas to Chinese Nationals

- An Application / Proforma to the Indian Mission in China by an Indian / Chinese company seeking security clearance for the grant of an EV is to be submitted after incorporating the following additional information:
 - Educational Qualification and present job;
 - Nature of Job proposed to be performed in India.

- A copy of the EV Application / Proforma is also required to be forwarded to the Foreigners Division, MHA;
- Clearance / Rejection of Visas will be to be determined by the Foreigners Division, MHA, within 60 days from the date of receipt of the application;
- Upon receipt of the application in the prescribed format, the MHA is to forward the same to the following two departments:
 - The Intelligence Bureau (IB);
 - Ministry of Labour (MoL).
- The IB will give its clearance / rejection of the application to the Ministry of Home Affairs within 15 days from receipt of the proposal, and the Ministry of Labour will give its clearance / rejection of the application within 45 days;
- MEA will also compile details of all BVs issued to Chinese Nationals in the past for the execution of projects / contracts in India with effect from January 1, 2008. This information will be forwarded to IB for verification on whether such personnel are in India beyond the validity of their BVs.

Issue

The procedure of obtaining EVs in the Indian Missions in the home countries of foreign nationals may prove to be challenging in practice for assignees and employers. Additionally, consistent practice and procedures need to be developed and implemented at the Missions located in different countries.

The Bottom Line

The clarifications issued by the Government will have significant implications for inbound short term assignments to India. Assignees coming to India from overseas countries on short term visits, even for stewardship functions, may require an employment visa. Further, the issue of a visa whether business or employment, may be subject to greater scrutiny. The change in the status of a visa

would definitely have tax and social security implications for the assignees and employers during their stay in India. Additionally, corporate tax ramifications may also be triggered.

We feel that the following actions are immediately needed for organizations having employees visiting India on various assignments:

- Review of the assignment programs to understand and comply with visa requirements;
 - Review short term assignment programs to understand and identify the tax (individual and corporate) and social security implications and compliance requirements in the new scenario;
 - Restructure the assignment programs, as necessary;
 - Start compliance under the new regime in respect of Assignees working on projects/contracts in India.
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