



Global BRIEF Immigration Alert 10_09

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INDIA: Employment & Business Visas CHANGES

The Ministry of Commerce and Industry, Department of Industrial Policy and Promotion, India issued a letter on the 20th August, 2009 that fundamentally changed the Business and Employment Visa categories. As the initial letter was not well received, a subsequent clarification guideline was issued by the Ministry of Home Affairs ("MHA") on the 25th September, 2009. These major restrictive changes are a direct result of the historic abuse of the Business Visa by travelers to India.

There are three areas of change that will impact travelers to India immediately and those are:

- A. Business Visas for all travelers
- B. Employment Visas for all travelers except Chinese nationals
- C. Employment Visas for Chinese nationals

We will discuss the three areas of change below in more detail.

A. Business Visas (BV) for all travelers

Going to India?

The Government of India has defined clearly what allowable activities for the purposes of a Business Visa are.

1. To establish a foreign venture or company
2. Explore business opportunities in India
3. Purchase or sell industrial products in India
4. Business Meetings of a short nature

Additionally, there is now clear guidance on the fundamental notion that Business Visas are not suitable for the purpose of employment or work.

The Ministry of External Affairs ("MEA") will advise the Indian Consular Missions located overseas not to grant Business Visas to foreign nationals who plan to go to India for execution of projects OR contracts.

All pending Business Visa applications at the Indian Consulates or Embassies where the

support letter indicates that the traveler will be executing projects or contracts are to be returned to the applicants unapproved.

Accordingly, people who intend to undertake employment or work in India MUST apply for an Employment Visa in their country of citizenship (see below under Employment Visas for all travelers). Fortunately this "**country of citizenship**" rule, does NOT apply to Business Visa applicants.

Already in India?

ALL Indian Business Visa holders, who are currently in India and engaged in projects and contracts such that would constitute employment or work, must depart India by the 31st October 2009, or by the expiry of their Business Visa whichever is sooner.

There is no provision for any extension of stay beyond the 31st October 2009.

Clients are well advised to note that it is NOT possible to change immigration status from Business Visa to Employment Visa within India.

On the positive side, the MHA guidelines are very clear that those Business Visa holders, currently in India, who are engaged in allowable legitimate business activities as outlined above, are NOT required to depart India by 31 October 2009.

Clients who are currently in India on valid Business Visas and who are unsure of next steps are encouraged to reach out to their Pro-Link GLOBAL Immigration Specialist for guidance.

B. Employment Visas (EV) for all travelers

With retro-active effect to the 16th September 2009, all travelers who require Indian Employment Visas are now required to file or lodge their application within their **country of citizenship**. Applications for Indian Employment Visas can no longer be filed or lodged within a person's country of residence.

As a practical example, an Australian passport holder, living permanently in the U.S.A on a valid Green Card, can NO LONGER apply for an Indian Employment Visa in the U.S.A. The application must be made at the Indian High Commission in Australia.

From a logistics perspective, this means that clients will need to plan well in advance of any proposed travel to India for Employment Visa purposes as the country of citizenship now dictates the country of filing as well and be prepared for the fact, that a flight to their country of citizenship **MAY** be required *prior* to the Employment Visa being issued.

At this time, the High Commissions and Embassies, are unsure of whether they will require "**in person appearances**" at the Embassy for the Employment Visa applications. Clients are reminded that Consulates and Embassies, reserve the right to request an in-person appearance for any Visa Application.

The guidelines from the MHA clearly indicate that the following categories of applicant **WILL** be considered for employment visas:

- i. Skilled or qualified professionals, or
- ii. A person engaged or appointed by an Indian company, organization, industry or

undertaking on contractual or employment basis at a senior level or as technical expert or in managerial position.

Conversely, the following categories of applicant **WILL NOT** be considered for employment visas:

- a) Requests for Employment Visas for which a large number of qualified Indians are available should not be considered.
- b) Requests for Employment Visas for clerical, routine or secretarial jobs will not be granted under any circumstances.

The Indian company or organization, will now be held responsible for the conduct of the foreign national during their stay in India and also be responsible for their departure from India upon expiry of their EVs.

C. Employment Visas for Chinese nationals

Chinese nationals applying for employment visas are required to undergo the same requirements as discussed in paragraph B above, and in addition are subject to **an additional requirement** called a **security clearance**. In the past, security clearance applications were referred by Indian diplomatic posts to the Ministry of Home Affairs (MHA) and were often delayed there indefinitely. Until the issuance of the guidelines, the security clearance process was known only internally to the relevant government agencies.

The guidelines clarify the application process for security clearances and we will examine them more closely below.

- 1) Individual applicants and their sponsoring entities are required to file the application with the relevant Indian Consulate or Embassy
- 2) Individual applicants and their sponsoring entities are required to submit a copy to the MHA in New Delhi.
- 3) The Consulate or Embassy endorses the application to the MHA.
- 4) MHA forwards copies of the application to the Intelligence Bureau and the Ministry of Labor for review.
- 5) Based on the recommendation of these agencies, the MHA conveys the approval or denial of the application to the Consulate or Embassy

The security clearance process is expected to take around 60 days or longer. Accordingly, clients should plan well ahead and have clear expectations that timing for a Chinese national to obtain an Employment Visa for India, is at a minimum three (3) months from date of filing.

The guidelines also announced that the Indian government is monitoring Chinese nationals who **may be on expired** Business Visas and working on projects or contracts in India.

Indian Consulates are working with the Intelligence Bureau to compile information on business visas issued to Chinese nationals since January 1, 2008, including the visa holder's name, **sponsoring entity**, visa validity period, and educational qualifications, among other details.

Individuals and sponsoring companies found in violation will face penalties, which under current practice are **discretionary** and may take any of the following forms:

- 1) Monetary fines,
- 2) Blacklisting of the sponsoring companies
- 3) Ban on re-entry for the individual, or imprisonment.

Caveat Lector / Warning to Reader

This is provided as informational only and does not substitute for actual legal advice based on the specific circumstances of a matter. Readers are reminded that Immigration laws are fluid and can change a moment's notice without any warning. Please reach out to your local Pro-Link GLOBAL specialist should you require any additional clarification.

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