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## *Emerging Trends:* **'Best & Brightest' Schemes Impact Recruitment and Immigration Compliance**

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*The beginning of the 21st century has ushered in a forever-changed job market. The digital information age has displaced millions of traditional workers while creating a new class of highly mobile professional immigrants willing to bring their expertise to myriad global markets. Faulk and Salem reveal how countries, not companies, are sweetening the deal to lure these highly-specialized workers to enhance their economies while placing the onus of immigration compliance squarely on the host company, and what this means for human resource and global mobility professionals.*



**W**ho are the “best and brightest?” In 2007, while appearing before a committee of the U.S. Senate to discuss immigration restrictions, Microsoft founder Bill Gates commented that Canada was attracting the “best and brightest” immigrants through that country’s more favorable immigration policies. “Best and brightest” generally is used to describe the most valuable human capital—individuals who have excelled in science, technology, engineering, and math (STEM) professions. Gates astutely identified for the U.S. Senate what has now become a growing global trend—the international competition for the best and brightest that is now being waged by global immigration policies intentionally designed as a double-edged sword, to lure in top talent while holding the company liable for strict regulatory compliance. This growing trend is significant for human resource and global mobility professionals, as this is yet another way in which companies must be informed and well-prepared to do business abroad.

### **The Global Talent Pool**

Having a sophisticated information economy with the attendant infrastructure is the gold standard by which all emerging and established economies will be measured for the foreseeable future. Information economies encompass a wide range of professional services, from banking to scientific research. Gaining the best and brightest candidates from the global talent pool, as is required to support these skilled labor needs, is becoming a hard-fought battle by not only companies, but the very countries that have fostered the transformation from a manufacturing economy to a services economy.

Countries that are able to attract the best and brightest talent reap the rewards through economic, technological, and scientific advancements, along with education and training contributions to the local workforce. Furthermore, while these top professionals may come into the host country on a work assignment, they also are viewed more favorably for permanent residency and naturaliza-

tion down the road. Thus, their achievements may ultimately bolster national recognition. For example, according to the Nobel Prize Foundation, in 2009, several Nobel Prize winners were immigrants living in the U.S. In recent years, several U.S. citizens who have won Nobel Prizes were born in India, and at least three were born in China.

Because many professional service-level jobs now require applicants to be technology-savvy workers with considerable academic qualifications and professional experience, this makes for an extremely portable job market for economic immigrants. In the United States, the average employment tenure for most workers is roughly estimated at 4.4 years with any one employer, according to January 2010 U.S. Labor Bureau statistics. The traditional standard of staying in a job for years has now been replaced by workers having multiple employment tenures and, with a global market, the ability to readily transfer their educations and skills abroad.

The countries that supply a growing majority of the global talent pool are those that emphasize education in mathematics, cutting-edge technologies, and sciences. While the U.S. has traditionally ranked high in supplying skilled migrant workers, according to the United Nation's 2010 "World Migration Report," Bangladesh, China, India, Mexico, and Pakistan comprise the majority of the top 10 countries having the largest emigrant populations. The common factors each of the countries share is that their best and brightest workers are generally younger, have highly technical education backgrounds, and are eager to emigrate either to other knowledge-

intensive economies or to rapidly emerging markets.

### **Governments Compete for Top Foreign Talent**

During the past decade, as companies established themselves abroad, the digital age ushered in start-ups, virtual workplaces, and the creation of niche jobs to accommodate the expanding "long-tail" economy where creative minds firmly believe that technology will take on the establishment. In addition, the great unspoken trend occurring in many first-world economies is an aging workforce that is not keeping pace with rapidly changing technologies, increasingly hesitant to relocate, and/or entering retirement. Finally, since the global recession of 2008, many countries' governments are under great political pressure to protect their domestic workforce and limit immigration to only the best and brightest migrants.

Since the mid-part of the last decade, several countries recognized that to balance the needs of maintaining stable domestic job growth with being globally competitive, preference must be given to a new, ideal economic immigrant: young, high-income earning, medically fit, and university-educated in specific disciplines. Thus, applicant characteristics are increasingly being viewed as having equal, if not greater weight, than the traditional "intra-company transferee" executive/senior manager expatriate profile of the 1990s and early 2000s.

While intra-company experience remains an easier path to obtaining expedited processing of work permits, countries are now increasingly interested in offering "fast-track" processing of work permits for these

skilled young migrants who can fill shortage-occupation, nation-building jobs in specific industry sectors.

Sectors that many countries identify as having a short supply of skilled workers are in engineering, medicine, research, and information technology development.

As governments are using their immigration systems to dictate to companies their ideal job candidates, countries also are controlling the type of host sponsor that will receive preferential treatment in receiving work authorizations. Higher sponsorship standards are being imposed on host companies by requiring companies to apply to the migration service as being qualified to sponsor foreign workers, raising the minimum or market salary requirements, and imposing ratios of domestic workers to foreign workers. As governments also take much more seriously border control and labor market protections, company sponsorship will require higher immigration compliance.

### **Latest Developments**

With the recent near-collapse of the U.S. economy and the seeming paralysis of the federal government's ability to develop a comprehensive immigration policy to attract the best and brightest immigrants, other countries have taken, or are taking, steps to redesign their immigration systems to accommodate skilled overseas workers while ensuring that companies are evidencing a specific and true need for specialized foreign labor.

The ways in which countries are revamping their immigration systems range from a points-based system, identifying shortage-occupations or professions, and economic investment. The following is a brief

## On the Web

The complexities of international assignment compliance are broad and far-reaching, from entry refusal and fines to irreparable reputation damage. Human resource and global mobility professionals are well advised to review these and other resources, available at [www.WorldwideERC.org](http://www.WorldwideERC.org):

### **Blind Man's Bluff: The Perils of Overlooking International Assignment Compliance Issues**

[www.WorldwideERC.org/Resources/MOBILITYarticles/Pages/0708rosenzwaig.aspx](http://www.WorldwideERC.org/Resources/MOBILITYarticles/Pages/0708rosenzwaig.aspx)

### **At Your Own Peril—Short-term Assignments and Immigration Compliance**

[www.WorldwideERC.org/Resources/MOBILITYarticles/Pages/0407jimenez.aspx](http://www.WorldwideERC.org/Resources/MOBILITYarticles/Pages/0407jimenez.aspx)

### **Managing Mobility Risk: The Importance of Immigration Compliance for Short-term Business Travelers**

[www.WorldwideERC.org/Resources/MOBILITYarticles/Pages/0109ryan.aspx](http://www.WorldwideERC.org/Resources/MOBILITYarticles/Pages/0109ryan.aspx)

### **Tax and Legal Update—United States Foreign Corrupt Practices Act (FCPA) Compliance**

[www.WorldwideERC.org/Resources/MOBILITYarticles/Pages/0211-tax-and-legal-update.aspx](http://www.WorldwideERC.org/Resources/MOBILITYarticles/Pages/0211-tax-and-legal-update.aspx)

### **Recruiting Foreign Workers in the United States—How to Remain Competitive and Ensure Compliance in a Climate of Increased Government Scrutiny**

[www.WorldwideERC.org/Resources/MOBILITYarticles/Pages/0810-Riberio.aspx](http://www.WorldwideERC.org/Resources/MOBILITYarticles/Pages/0810-Riberio.aspx)

look into how these systems adjudicate who is “best and brightest” and a representative sample of those countries that currently use these systems.

**Points-based systems.** Points for receiving work authorization are awarded based on a possible combination of several of the following criteria:

- **Personal characteristics:** a foreign national’s age, medical health, academic qualifications, and potential for social integration (e.g., fluency in the host country’s official language);
- **Earning potential:** the amount of the foreign national’s current salary or the expected future earnings;
- **Personal maintenance:** ability of the foreign worker to evidence that sufficient funds are readily available to accommodate the worker and family during the initial months or first year of stay;
- **Professional characteristics:** the foreign worker’s professional experi-

ence is relevant to the proposed job or shortage-occupation job; the foreign worker is an intra-company transferee;

- **Secured job offer:** a qualified company sponsor has extended a valid job offer to the foreign worker;
- **Investors/independent entrepreneurs:** Foreign businesspersons committing minimum capital requirements and assurance to employ host-country workers; proposed new business in an industry that promotes a knowledge-based economy.

**Countries:** Australia, Canada, Denmark, Hong Kong, Netherlands, New Zealand, and the United Kingdom.

The above criteria also are used by other countries’ immigration systems when assessing work authorization under the following programs or schemes:

**Highly-skilled migrant programs.** These are sponsorship-connected immigration schemes

whereby the host country migration service sets aside “fast-track” processing for highly-skilled workers, even in countries where work permit quotas exist.

**Countries:** Netherlands—“Knowledge Migrant Program;” Russia—“Highly Qualified Worker Program;” Singapore—“Enhanced Employment Pass;” Spain—“*Unidad de Grandes Empresas*” (Large Business Unit).

**“Card” schemes:** a reference to the U.S. green card concept, certain countries extend work authorization to highly-skilled migrants applying for shortage-occupation jobs or developing entrepreneurial opportunities in specific growth areas.

**Countries:** Denmark and Ireland—“Green Cards; France—“*Compétences et Talents*” (“Skills and Talents”) Card.

Most notable of the “card” schemes is the European Union’s (EU) advancement in requiring its 27-member countries (*Editor’s note:*

please see page 140 for a list of EU countries) to implement their own “EU Blue Card” programs to skilled migrants who are not nationals of an EU country or Switzerland.

The EU Blue Card scheme is designed to permit skilled migrants to apply for “fast-track” work authorization in other EU countries after meeting certain work/residence conditions in the EU country that granted the original status.

**Student work permits.** According to the Organization for Economic Cooperation and Development’s (OECD) “International Migration Outlook 2011,” “one long-term trend which is holding up through the jobs crisis is international student migration. It has been increasing steadily over the past decade and there are now more than 2.3 million international students in OECD countries. About one in four will stay in the countries in which they studied, providing an increasingly important source of skilled workers.”

Above all of the aforementioned ways in which countries are trying to attract the best and brightest, the granting of viable work opportunities for graduating university and vocational students in critical occupations will be one of the most effective and important ways that countries can combat an aging workforce and high unemployment. By harnessing the energy and abilities of younger generation workers, new and sustainable businesses can be created.

**Countries:** Many countries offer “Working Holiday Visas” that, unfortunately, limit many students in their ability to maximize their full post-education potential. Countries are grappling with how to match graduating student’s skills with appropriate work opportunities.

Recently, a controversial law, the California “Dream Act,” was introduced by the California Legislature to retain foreign student talent by allowing young, undocumented students access to private grants and possibly state-funded scholarships to attend California state colleges and universities.

### Host Companies on the Hook for Compliance

Many countries have learned that “if companies offer it, the immigrants will come.” However, according to recent International Labor Statistics produced by the U.S. Labor Bureau, joblessness in many first-world economies is well north of traditionally sustainable unemployment rates in their countries. These statistics show the levels of significant unemployment ([http://www.bls.gov/ilc/intl\\_unemployment\\_rates\\_monthly.htm#Rchart1](http://www.bls.gov/ilc/intl_unemployment_rates_monthly.htm#Rchart1)).

The political mood for governments to protect the home-country labor market has forced countries that are initiating new schemes designed to attract foreign skilled workers to also put in place stronger immigration compliance requirements and to increase both civil and criminal penalties for companies that do not adhere to the regulations.

**Compliance requirements.** Stronger compliance requirements include, but are not limited to, the following:

a) Host companies must register with the immigration service as qualified sponsors of foreign workers (Argentina, Australia, Brazil, Netherlands, Russia, and the United Kingdom). This will require certain benchmarks be met, such as a minimum amount of paid-up capital,

minimum annual gross income or overall turnover; paid corporate tax certifications; and company certificates of good standing.

b) Host-company HR must ensure that foreign talent meet specific academic and professional qualifications directly related to the proposed job. In addition, other factors such as the candidate’s medical health, age, fluency in the host country’s spoken and written language, and earning potential also may factor into identifying the best and brightest immigrants. Immigrants from certain countries, such as China and India, may possess university certificates that require further credentialing by the host country’s education authority.

c) Host-company HR must carefully assess what types of specialized skills positions are being offered. This will involve assessing whether positions can meet the requirements of shortage occupations or specific positions that a host country’s immigration and labor authority identify as qualifying for certain exemptions or “fast-track” processing. Of primary importance is ensuring that a proposed position genuinely requires such specialized knowledge that there are no readily available candidates in the domestic labor market.

d) Host companies must designate a dedicated company immigration compliance representative to liaise with the home country’s immigration service to answer questions regarding work permit applications, meet with labor inspector officers, and maintain immigration compliance files.

**Strong Compliance Penalties.** With the instability in the global economy and increasing rate of unemployment, countries are

responding through stricter immigration compliance enforcement. In Canada, the UK, and Australia, compliance audits will become more likely, including inspection of the employer's documents for foreign workers. Inspections may include requests for immigration papers for foreign workers, company payrolls, and corporate documents evidencing eligibility to sponsor foreign workers.

Strong penalties for immigration non-compliance vary per country, ranging from fines and penalties for the employee and employer, to criminal sanctions. Examples of company penalties include:

- a) company fines ranging from US\$20,000 to over US\$100,000 per offense;
- b) debarment from sponsoring foreign workers;
- c) debarment from continuing business operations in the country;
- d) disbarment of company directors and officers;
- e) cancellation of sponsorship licenses; and
- f) damage to the company's reputation.

In the United Kingdom, company penalties include up to £10,000 (approx. US\$16,300) per worker, loss of company license, and for the worst cases, can include imprison-

ment and/or unlimited fines. In Australia, companies may be fined up to AU\$66,000 (approx. US\$69,000) per illegal worker along with other severe accompanying civil and criminal fines/penalties per individual worker. Canada has even implemented public posting of offending companies on the CIC's Temporary Foreign Worker Program's Ineligible Employers website (As of the date of this article, no companies have been listed.).

### What Global Mobility Must Do to Prepare

The mantra of "think globally, act locally" has now truly come full circle for many countries. The global economy demands and requires global talent, but local governments must protect their national workforce in the face of seemingly long-term, structural unemployment.

What companies can do to take advantage of the existing and future talent schemes is to have a unified approach between the company's HR and their global mobility professionals in identifying qualified candidates. This will include discussions with the host company HR to review a candidate's qualifications and the proposed job duties against the host country's immigration requirements.

As evidenced above, recruitment of

best and brightest talent also carries an increasing responsibility for companies to submit accurate and verifiable applications. When selecting for foreign candidates, some governments are requiring companies to be increasingly self-policing and self-compliant when attesting that there are no qualified host country national workers readily available to fill job vacancies. In exchange for quickly approving qualified candidates, migration authorities are expecting company sponsors to observe specific talent scheme requirements and undertake appropriate internal compliance measures to prevent submission of fraudulent work permit applications.

Global mobility and HR professionals can take proactive steps by working with their global immigration suppliers to assess potential candidates, prepare necessary documentary evidence, and, should the country's government conduct an audit, assist the host company's HR in meeting all regulatory compliance requirements. ■

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