



BY SOPHY KING AND LAVINIA PASCARIU

Extended Business Travelers

Immigration Risk Management

With the rise of short-term assignments, and increased focus on stealth expatriates, an organization intending to protect itself from the consequences of immigration penalties must be aware of the rules and regulations that apply to business travelers. King and Pascariu examine some common assumptions about extended business travelers, provide country-specific examples for reference, and offer a detailed case study on a group of financial auditors who were being assigned to multiple international locations for three weeks at a time.

“**E**xtended business travelers”—three little words that cost a great deal of companies a great deal of trouble. Immigration non-compliance for employees on extended business trips, or short-term assignments, is rife. The term “stealth expatriate” was first coined by the *Economist* in April 2005 in the article, “In search of stealth; Today’s global businesses have created a new kind of expat,” to describe this growing phenomenon. The article gives the following definition: “stealth expats come in two main varieties: one is the cross-border commuter, a growing phenomenon particularly in the European Union (EU), where the relaxation of border controls and spread of low-cost airlines have made weekly commuting between cities such as Brussels, London, and Paris almost commonplace. The other is the accidental expat—someone who goes on so many business trips or temporary assignments that he inadvertently incurs new fiscal liabilities or overstays his welcome as a foreign worker.”

Since that article was written governments worldwide have awakened to the problem. In many countries, immigration enforcement agencies and bureaus are using sophisticated technology to track travelers—and are coming down hard on non-compliant employers.

The issue is not straightforward. Not all extended business travelers need immigration approval—but then again, some do. In addition, tax regulations around short-term assignments throw many employers off track—it is important to note that just because an employee may be legally tax exempt in a location does not mean that he or she also will be exempt from immigration requirements.

Case Study

Following is a specific case study in detail, looking at a group of internal financial auditors being sent to several subsidiaries abroad. Internal auditors, who visit a location for a limited time and do not necessarily get involved in the day-to-day operations of the host location, are an excellent example of the grey line between “work” and “business.” Our client’s auditors, all U.S. nationals, were being assigned to various locations for up to three weeks at a time to conduct financial, operational, and compliance audits, to identify and clearly define audit issues and root causes, to recommend improved internal controls and business processes, and to evaluate adequacy and effectiveness of internal controls, and compliance with corporate policies and procedures. We provided them with the following information:

AUDITING—IMMIGRATION CASE STUDY

BRAZIL

- In general, auditing activity will require a work visa in Brazil. For instance, if the foreign national undertakes specialized work in the audit area, assisting in a project that includes technical work assistance with inspection or audit control, that would be considered work and a work visa could be obtained for a period of one year or 90 days, depending on the case.
- However, foreign nationals simply attending an audit meeting with the Brazilian company, and who will not be working directly with the company’s financial system, may do so on business visitor status.

INDIA

- Auditing activities that include reviewing, overlooking, or managing an audit as part of a work assignment will trigger the need for an employment visa.

CHINA

- Duration of stay and location of employment contract is more relevant in this case than activity to be performed. As noted in this article, a foreign national holding a signed employment contract with a corporation outside China, who is paid from outside China and will be present in China for less than three months, will be considered a business visitor.

SWITZERLAND

- Auditing is viewed as work and does not fall under the category of a business visa. It does not matter what type or level of audit is involved.
- However, if the auditing is limited to a period of up to eight days in a calendar year, then a work permit is not required.
- However, foreign nationals simply attending an audit meeting with the Swiss company, and who will not be working directly with the company’s financial system, may do so on business visitor status.

RUSSIA

- It is very hard to give a 100 percent definite answer on what type of visa would be suitable for an audit activity, but for an auditing activity that takes no longer than two weeks, a business visa is recommended most frequently. It would be advisable to limit the duration of the audit to two weeks if possible.

Common Risk Areas for Extended Business Travelers

Staying on home payroll is the most common area of risk for business travelers. Staying on home payroll is no indication that immigration approval will not be required. In many countries, payroll location affects the immigration process, but it is extremely rare for home payroll to mean that no work permit is required.

Another area of risk is that of assignments lasting fewer than 90 days. Many assignments of less than 90 days are tax exempt. This does not mean that they are immigration exempt. In many countries, working for even one day in the host location office will trigger the need for work approval and an immigration application.

A third area of concern is that of client site visits only. Client site visits will complicate the immigration process but they will not mean that you do not need to apply for immigration approval. Your employees working at a client site are still working, and may still need immigration work approval.

Pre-assignment “look see” trips are another cause for concern. It is common for international assignees to visit a host location before they move there. Families want to look at houses; parents want to investigate schools.

Often, these trips can be extended, as the employee makes a series of visits to the office—and can stretch out into, essentially, a period of employment in the host location.

Then there is the “meetings only” type of travel. Business trips often are defined as “meetings only”—but what does this really mean? In today’s world, many people have full-time jobs that are simply a series of meetings, telephone calls, and fol-

low-up e-mails. It often is very hard to draw a line between a business meeting that comes within the definition of a business trip, and a business meeting that is part of a series of meetings, which together can be considered as employment—or work—in the host location.

Another area of risk is that of training. “Training” is a pretty broad description, covering receiving training, giving training, classroom training, hands-on training, installation and training on equipment provided by a supplier, and so on. The type of training to be done—the actual activities carried out—will determine the need, or not, for work authorization. Many times, training cannot be carried out under business visitor status.

What about business travelers who do not require entry visas? A “visa waiver” is the term often used to describe an exemption from the requirement to obtain an entry visa. For example, U.S. nationals do not need to obtain an entry visa to visit the UK—by simply presenting their passport to the immigration officer at the port of entry (i.e., the airport), they can be granted 180 days leave to enter as a visitor. The key word here is visitor—visa waiver rules typically apply to short-term visits for tourism or business; not for employment. A “visa waiver” national will be as guilty of non-compliance as a “visa national” if he or she is found working without the necessary immigration approval.

Finally, there is the effect of mixing and matching legislation. There is no hard and fast rule for what is considered “business” and what is considered “work.” Each country has its own legislation and its own interpretation. Much of the time written legislation is unavailable, and immi-

gration attorneys and consultants must use their own experience and discretion to guide their clients. It is not possible to use one country’s rules to guess another country’s risks—if something is permitted in the United States, that is not to say it will be acceptable in Russia.

Country-specific Examples

Following are examples of different practices from several countries to illustrate how widely immigration policies in this area vary.

India. Until October 2009, it was common practice for companies to apply for business visas for short-term assignees or project workers. Indian embassies and consulates around the world often issued business visas for this type of activity without question. In October 2009, the Ministry of Home Affairs decided to put a stop to this, and took the unusual step of issuing a “Frequently Asked Questions” (FAQ) sheet (http://mha.nic.in/pdfs/work_visa_faq.pdf), which clearly listed acceptable activities under a business visa, plus activities that trigger the need for an employment visa. Project/contract work, even if for short duration and regardless of payroll location, was placed firmly in the “employment visa” camp. Since the issuance of the first “FAQ” sheet in October 2009, several new versions have been published, with changes and tweaks made each time to the lists of acceptable activities under a business visa or employment visa. The most recent change, in December 2010, was the introduction of project visas, specifically for employers in the power and steel sectors to bring in foreign nationals to execute short-term projects or contracts. Indian immigration rules are still changing and the authors advise companies to

seek professional guidance when applying for Indian visas.

China. China’s Notice on Certain Matters Regarding the Implementation of Regulations on the Management of Employment of Foreigners in China, issued by the General Office of the Labor Department on April 19, 1996, states that all foreigners with employment contracts with People’s Republic of China (PRC) entities are required to obtain work permits regardless of length of stay or activity in China. However, the same notice states that foreigners whose employment contracts are with an entity outside China and sent on short-term assignment (less than three months) are not required to obtain work permits and may enter on business visas alone.

Mexico. On May 1, 2010, Mexico introduced a new Visa Manual, which had a significant impact on immigration management for short-term assignments. The Visa Manual made allowance for foreigners remaining on home payroll and contract, and who are from “non-restricted” (i.e., visa waiver) countries to perform short-term work activities for up to 180 days without the need to obtain a visa or a work permit.

United Kingdom. The UK Border Agency provides a list of permissible activities for business visitors and states that, depending on activities, “some business visitors may need to qualify under the employment rules.” It also lists certain definite criteria for business visitors—that they should be based abroad and not intend to transfer their base to the UK, even temporarily; and

- receive their salary from abroad, although it is acceptable for them to receive reasonable travel and subsis-

ON THE WEB

For more information regarding short-term business travelers, please visit www.WorldwideERC.org.

Reality in the Workplace: Long-distance Commuting

www.WorldwideERC.org/Resources/MOBILITYarticles/Pages/1210-Barlow.aspx

Split-screen Life: an Intimate Look at International Short-term Assignments and Extended Business Travel

www.WorldwideERC.org/Resources/MOBILITYarticles/Pages/0308copeland.aspx

The Rise of Alternative Assignments

www.WorldwideERC.org/Resources/MOBILITYarticles/Pages/1110-Cadden.aspx

tence expenses while in the UK;

- not be involved in selling goods or services direct to members of the public;
- not be replacing someone in the UK, including for temporary leave periods; and
- not be coming to the UK do work placements or internships.

Poland. Poland has a work permit waiver in place for short-term assignments. For short-term, intra-company transfer (In Poland, the definition of an “intra-company transfer,” or “ICT” assignment is a transfer of an employee overseas where the home [sending] and host [receiving] entity are linked by common ownership.) assignments of less than 30 days in a

12-month period, the requirement to have a work permit is waived. “Visa waiver” nationals (i.e., nationals who do not need visas to enter Poland or the rest of the Schengen area for business or tourism purposes) may enter Poland for work for up to 30 days in a 12-month period as an intra-company transferee without making any application at all; “visa nationals” are required to obtain a visa in advance of travel. In addition, nationals of some countries to the immediate east of Poland (Ukraine, Russia, Belarus, Georgia, Moldova) are exempt from the work permit for six months within one year but still require a certificate of exemption, a work visa, and a residence permit.

Managing Immigration

Managing immigration for extended business travelers, or short-term assignees, is no picnic if the company has locations in several jurisdictions. Immigration legislation varies widely from country to country, and activities that are considered work permit-exempt in one jurisdiction may trigger the need for time-consuming and administrative immigration applications in another country. Too many companies make assumptions about visas or permits for short-term assignments, or simply overlook immigration requirements, and thereby place themselves and their employees at risk. We advise that companies sending employees to a foreign country for any activity over and above plain, simple business meetings should seek expert guidance. ■

Sophy King is director, knowledge management, Pro-Link GLOBAL, London, United Kingdom. She can be reached at +44 (0) 203 004 9438 or e-mail sophy.king@pro-linkglobal.com.

Lavinia Pascariu is an attorney specializing in global immigration for Pro-Link GLOBAL, St. Louis, MO. She can be reached at +1 941 462 2732 or e-mail lavinia.pascariu@pro-linkglobal.com.

