



INTERNATIONAL ASSOCIATION OF YOUNG LAWYERS

**“New job – yes, new country – yes, new  
visa – wait, new what?”**

## **Immigration law workshop London 2015**

Katie Newbury

Kingsley Napley LLP  
Knights Quarter  
14 St John's Lane  
London  
EC1M 4AJ

[knewbury@kingsleynapley.co.uk](mailto:knewbury@kingsleynapley.co.uk)

## Introduction

We live in an increasingly globalised world where in 2013, 232 million people (3.2% of the world's population) lived outside their country of origin<sup>1</sup>. These figures incorporate people who find themselves in a country other than their country of origin for a variety of reasons. In this workshop we will be discussing corporate migration and comparing different jurisdictions' rules on facilitating migration for the purposes of employment. As the global economy continues to recover, many jurisdictions are witnessing a resurrection in demand for global talent. Similarly, international companies increasingly want the freedom to move their large workforces between different offices with as little administrative burden as possible. The employees who are relocating around the world for their employment, often want to be able to bring their family and want the visa process to be as smooth as possible, distracted as they are by the other stressful elements of an international move.

Governments recognise that in order to thrive, they increasingly need to be able to attract the best talent globally and that the administration of their immigration system will be key to that calculation for prospective movers. They also want companies, particularly in growing and fast moving areas such as the technology sector, to view their market as one welcoming to new business and who will ease difficulties they may face in bringing key staff to that jurisdiction. In-demand employees and employers are not only looking for favourable immigration regimes but also for processes which fit in with their often busy lifestyles, including fast track and VIP services.

On the other side of the equation, the laws regulating movement of employees are often impacted by political expediency. 'Immigration' remains an emotive topic and this is seen in some of the more restrictive tests to be met in the countries from which some of our National Reporters have hailed this year. General dislike of immigration (and a failure in the public psyche and media to differentiate between different types of immigration) and in this specific case, a fear that foreign workers are taking jobs can lead Governments to legislate in this area against their own economic agenda.

The discussion at the 2015 immigration workshop will outline the key regulatory framework in the relevant countries before considering the current environment for global workers and how different Governments are addressing the key tension between the desire to attract the best talent and international companies and the need to appeal to a domestic electorate potentially wary of global competition for employment.

Our national reporters were:

- Arpad Gerad, Austria
- Yoav Noy, Israel
- Larry Markowitz, Canada
- Alexander Pirotte, Luxembourg
- Sachka Stefanova-Behlert and Sebastian Klaus, Germany
- Clare Hedges, United Kingdom

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<sup>1</sup> United Nations Population Fund <http://www.unfpa.org/migration>

## **1. Sponsorship of workers by employers for the purposes of securing a visa**

The questionnaire first dealt with whether a jurisdiction permitted the direct sponsorship of workers by employers for the purposes of a visa application.

While all jurisdictions covered by the national reporters offered some form of visa (subject to certain requirements) in order to facilitate employment with a specific employer, this was not universally enabled by direct sponsorship from the employer.

The concept of direct employer sponsorship clearly exists in the UK, Israel, Luxembourg and Austria. In Canada, 'sponsorship' as a term in immigration refers to family migration. However, Canada does have programmes that operate in a similar way to these sponsorship schemes whereby employers can hire foreign workers who can obtain visas on the basis of their employment. Germany does not operate a system of direct employer sponsorship, rather responsibility for securing permission to work in the country rests with the employee and approval is given by the Federal Employment Agency. However, there is an element of indirect sponsorship in that an applicant will generally require an employment contract with a German employer in order to procure a residence permit.

## **2. Options open to an employer who wishes to sponsor a worker**

### UK

The UK's scheme for sponsored workers falls primarily within Tier 2 of the Points Based System. This is a section of the UK Immigration Rules aimed at workers skilled to at least National Qualification Framework Level 6 or who fill a role in a designated 'shortage occupation'. Under this system, the employer is generally required to issue the proposed employee with a Certificate of Sponsorship or 'CoS'. There are minimum salary and English language requirements and maintenance requirements to ensure the worker will be able to support themselves. Tier 2 is divided into different categories including:

**Tier 2 General** for roles the employer cannot fill within the UK or EU resident labour market. The employer here must generally complete a Resident Labour Market Test (RLMT) by advertising the role for at least 28 days in a specified format. There are exemptions from the RLMT for workers earning over £155,300, recognised shortage occupations and for post-study work.

Where the RLMT has been completed and the employee is applying from outside the UK, it is necessary to apply for a 'restricted CoS'. These are restricted as there is an overall cap on the number of workers who can be sponsored in this way of 20,700. These restricted CoS are released in monthly allocations.

It is possible to assign a CoS for up to five years initially. After five years, the worker may be eligible to apply for indefinite leave to remain, otherwise their total time as a Tier 2 General migrant is capped at six years.

**Tier 2 Intra-Company Transfer** is for multinational organisations who need to transfer staff from an overseas employer to a related UK company with common ownership or control. There is no RLMT or English language requirement and the category does not lead to indefinite leave to remain. The route is sub-divided into four categories. Short Term Staff and Long Term Staff must have worked for the related overseas entity for at least 12 months and can obtain a visa for up to 12 months or 60 months respectively. There is also a Graduate Trainee option for workers on a structured graduate training programme which requires 3 months prior employment with the related entity and a visa can be granted up to 12 months. Finally a skills transfer visa does not require a fixed period of prior employment but is only for

up to six months and is intended to be a supernumerary role for transfer of skills to or from the UK workforce.

There are also two sector specific categories:

**Tier 2 Minister of Religion** - where the workers will be carrying out religious duties and are sponsored by a religious organisation; and

**Tier 2 Sports person** - for elite sports people and coaches who are internationally established at the highest level and will be sponsored by a sporting body, sports club, events organiser or other organiser operating in the sporting sector and where they have been approved by the relevant governing body for the sport in question.

For temporary workers, there is also Tier 5 of the Points Based System where workers can be sponsored up to 12 or 24 months as Religious Workers, Charity Workers or in the Creative and Sporting sectors.

### Israel

In Israel there are three options for sponsorship of workers depending on the length of time a worker is required for. It is possible to obtain a work permit for two years, one year, three months or just 30 days.

In Israel, other than those seeking entry on the basis of Jewish entitlement or as the partner of an Israeli national, employer sponsorship is mandatory in order to obtain a residence permit to live in the country.

### Luxembourg

In Luxembourg there are four options open depending on the type of employee. These include 'Locally hired', 'Locally hired highly skilled' (known as the 'Blue card category'), Intra-company transferees and sponsorship for the purpose of 'Provision of Services'.

### Austria

The initial work permit in Austria is the Restricted Work Permit. This is valid for up to one year and is issued for a specific job and employer at a specific location. It is possible for this to be renewed for a further year or after their first year, the worker can apply for a full Work Permit.

The Work Permit is valid for up to two years. It is restricted to a specific district in Austria and allows the worker to change employer. The work permit can be renewed and after five years, the migrant is eligible to apply for the unrestricted work permit. This enables them to work with any employer in any district in Austria for up to five years. While employer involvement is required for the 'Restricted Work Permit' it is not mandatory for the Work Permit or unrestricted work permit though employer support will speed up an application.

There is also a scheme for a limited number of workers known as the 'Red-White-Red Card'. This was introduced in 2011 and offers a more flexible immigration scheme for foreign workers and their families who wish to settle in Austria. Under this scheme, the migrant is tied to a certain employer. The key criteria for this scheme are qualifications, work experience, age, language skills and the employment the migrant has been offered. It is aimed at very highly qualified workers, skilled workers in shortage occupations, other key workers, certain graduates and self-employed key workers.

## Canada

Employers in Canada can hire workers under the following categories.

As Permanent Workers where they need someone to fill a vacancy on a permanent basis and it is not possible to find any Canadians or permanent residents for the job.

Employers can also make use of two programs to hire foreign workers.

The Temporary Foreign Worker Program can be used to fill temporary labour and skill shortages where a Labour Market Impact Assessment (LMIA) conducted by Employment and Social Development Canada has verified the need for a foreign worker.

The International Mobility Program doesn't require an LMIA to be conducted and exists where there are reciprocal exemptions for Canadians and competitive advantages for Canada in facilitating the migration.

Finally there are also options for employers to hire Francophone workers outside the Province of Quebec.

## Germany

There is no direct notion of sponsorship in Germany. However, employers will generally need to have provided a local employment contract to a prospective employee for them to secure a temporary residence permit.

### **3. Timeframes and the possibility of fast tracking the process**

## UK

Applications made from outside the UK are usually processed within three weeks and those made within the UK can take around eight weeks to be processed.

It is possible to fast track applications made outside the UK in some jurisdictions by purchasing the 'priority service'. However, this is only available in certain countries and it sometimes requires that the sponsoring employer is a 'premium sponsor'.

For applications made in the UK there are two options for expediting applications of this nature. There is a priority postal service, where for an additional fee, there is a reduced processing time of 10 working days. For very urgent applications, there is also a 'premium service' which offers same day processing. This requires the applicant to book and attend an in person appointment at one of the seven premium service centres in the UK. Finally, there is the option of the 'Super Premium Service' where, for a considerably higher additional fee, the Home Office will visit the applicant at home or work and take their biometrics there.

## Israel

The standard processing time for the two year, one year and three month work permits is three months. There is no way to expedite this process.

The visa application process for a 30 day work permit is an expedited one as standard and applications are processed within approximately ten days.

## Luxembourg

There is no process to fast track applications made in Luxembourg.

#### Austria

There is no process to fast track applications made in Austria.

#### Canada

Temporary work permit applications made outside of Canada will be processed between one and eleven weeks, depending on the jurisdiction in which the application is made.

When applications are made for permanent positions, employers can utilise the 'Express Entry' program to ensure applications for certain types of roles are processed within six months or less.

There is no additional fast track service but the Express Entry program is intended to assist eligible employers fill vacancies as quickly as possible.

#### Germany

There is currently no formal process to fast track applications made in Germany. However, where an employer is directly involved in the application procedure and/or made use of the preliminary examination procedure or the application is to fill a vacancy which is privileged and exempted from the requirement for approval from the Federal Employment Agency, the application may be expedited in practice.

### **4. Are family members allowed to accompany the migrant and if so what applications must be made for dependant family members?**

#### UK

Family members are allowed to accompany a sponsored migrant. Each family member will need to apply for a visa as the 'Dependant of a PBS migrant'. This application can be made in line with the main applicant or at a different time. The visa will be granted in line with the main applicant. There is a requirement to show the family member can be maintained. This is met either by demonstrating funds of £630 per family member or if the sponsoring employer holds an 'A' rated sponsor licence they can certify maintenance for the family instead.

#### Israel

Family members can accompany the main applicant to Israel. Where they are a national of a country that qualifies for a visa waiver with Israel, they will make the application after entry to Israel. Other nationals need make a visa application at the relevant Israeli consulate prior to entry to Israel.

#### Luxembourg

Whether family members can accompany the migrant will depend on the category they are in. Locally hired migrants cannot usually have their family members join them in the first twelve months unless they can come within the 'private reasons category'. Locally hired highly skilled migrants and intra company transferees can have their family accompany them.

Family members will apply either for family member status or within the private reasons category.

### Austria

Non-EU family members can accompany main applicants holding a Red-White-Red Card or those with a permanent residence permit within the EU where Austria's quota of foreign citizens is not yet fulfilled.

If the migrant intends to reside or settle in Austria for more than six months, they require a 'residence title' which is permission for more than six months corresponding to their residence permit. To make this applicant, they must show there are adequate means of subsistence, health insurance coverage and adequate accommodation according to local standards.

### Canada

Family members can accompany the migrant to Canada. If they wish to work, they would need to apply for their own work permit.

### Germany

Family members can apply to join the main applicant. Their residence permit is usually only granted after the migrant has secured their permit and is dependent on this.

Family members must show there are sufficient financial funds, sufficient accommodation and sufficient health insurance coverage. They may also need to show basic German language skills and may need to attend an integration course with language skill training on arrival in Germany.

## **5. Who are deemed to come within the description of 'family members' in your jurisdiction?**

	Spouse	Civil/registered Partner	Unmarried partner	Dependant relatives	Dependent children under 18	Dependent children over 18
UK	Yes	Yes	Yes	No	Yes	Only if an initial application was made while under 18
Israel	Yes	N/A	No	No	Yes	No
Luxembourg	Yes	Yes	No	Yes	Yes	Only if they have health issues
Austria	Yes	Yes	No	In rare cases	Yes	No
Canada	Yes	N/A	Yes	No	Yes	Yes – unmarried under 19 will qualify and over 19 where they

						have been reliant on their parent's financial support due to a physical or mental condition
Germany	Yes	Yes	No	In extraordinary circumstances	Yes	No

**6. What rights do family members have to employment, self-employment or other activities in your jurisdiction?**

UK

Dependant family members can work freely. The only restrictions are on work as a professional sportsperson or sports coach and as a doctor or dentist in training. They are also free to work in a self-employed capacity and to study.

Israel

Dependant family members are not permitted to work.

Luxembourg

Dependant family members are not permitted to work. They would need to seek their own sponsoring employer if they wished to work.

Austria

A dependant family member may have the right to work depending on the type of visa they hold. Holders of Red-White-Red Cards and Red-White-Red Card plus have access to the labour market. Other dependant family members need to have explicit permission to work, either for up to four months or longer than six months.

Canada

Dependant family members will not automatically have the right to work. They must usually have to apply for their own work permit and meet the same requirements as the main applicant.

Germany

Dependant family members will generally have unlimited access to the German labour market and will be able to work, be self-employed or undertake any other type of economic activities.

**Conclusion**

The jurisdictions covered by this report have all made provision for foreign workers to be involved in their economies and for employers to be instrumental in determining who should obtain a visa. Although the extent of the employer's influence changes between jurisdictions,



the fundamental role is seen as central. This acknowledges that employers are best placed to assess the market and determine where gaps exist and need to be filled by talent from outside the resident labour market.

While employers are acknowledged as being best placed to this extent, all jurisdictions limit the freedom to bring foreign workers in. Many of these limits involve a requirement to show that the incoming migrant will not be displacing a resident worker who could fill the vacancy. This is fundamental to mitigating the threat that some resident workers may feel from an influx of migrant workers. Maintaining this balance is becoming more difficult in some of the jurisdictions mentioned as attitudes towards migrants have become increasingly hostile.

The evolution of these routes in such a way as to centralise employers' needs has been critical for growth in this globalised economy and the hope is that this is not derailed by political movements towards tighter restrictions at the border and limiting visa categories. These political tensions and an insight into the future of corporate migration in the aforementioned jurisdictions will form the basis of the workshop at the September 2015 AIJA congress.