

Going Global: Temporary Work Permit/Visa Options Around the World

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GOING GLOBAL: TEMPORARY WORK PERMIT/VISA OPTIONS AROUND THE WORLD*

by

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The growing globalization of the world economy and the world's labor markets are undeniable facts. This is especially true for employers and workers in the most globally competitive, high value-added, high skill and high tech industries. As we prepare for the 21st century, immigration lawyers have a crucial role to play to facilitate the orderly, legal and efficient movement of key global talent across international borders. Considering immigration globally, it is important to remember that the United States is not only a destination country, but also a source country for temporary and immigrant workers.

Just as any experienced U.S. immigration lawyer will advise U.S. employer clients to plan immigration and visa compliance well in advance of any temporary or permanent hiring of a new international worker for a U.S. payroll, likewise, any non-U.S. employer (or foreign branch or subsidiary of a U.S.-based company) is well advised to plan for immigration and work permit compliance in other countries before putting U.S. or third country nationals on a foreign payroll.

Many American immigration lawyers first encounter international immigration issues when business clients call with requests for assistance in getting temporary work permits and visas for U.S. citizen employees being transferred abroad. It will come as no surprise that most of the world's developed countries have, like the U.S., established bureaucratic systems to control access to their local labor markets. The purpose of this article is to provide some background and a brief practical introduction to the temporary work permit and visa issuance process for several countries outside the U.S. A short summary of commonly used U.S. temporary worker categories is included for reference and comparison.

The nine countries surveyed include several examples from Europe, Latin America, the Middle East and the Asia Pacific region as a representative sample of global immigration options.

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This article and the accompanying conference session in Phoenix are offered in recognition that the time has come for AILA to join the world immigration law community. This program is a small first step in what I hope will become a continuing collaboration with immigration lawyers throughout the world. An ongoing periodic review of comparative international immigration practice and jurisprudence will benefit us all. We have a lot to learn.

ANSWERS TO SOME FREQUENTLY-ASKED QUESTIONS ABOUT VISAS AND WORK PERMITS FOR INTERNATIONAL WORKERS

(For more detailed country by country comparisons, see the attached International Quick-Reference Charts)

1. Approximately how many different categories of Temporary Work Permits or Temporary Work Visas for foreign nationals are currently available?

The number of work authorization options varies greatly from country to country. The range extends from several countries with only a handful of work categories each (e.g. Israel (1), Argentina (2), Spain (2), France (3), Hong Kong (4)) to other countries with many options such as Mexico (13), Australia (16) and the United Kingdom and U.S. with more than 30 temporary visa or work permit categories.

2. What government ministries or agencies are customarily involved in the Temporary Work Permit process?

For most countries at least two or three distinct government agencies are involved. Usually one office is tied to a Labor or Employment Ministry, which oversees local labor market protection regulations, and a second office, (usually a part of a Ministry of Justice, Law Enforcement or Immigration), monitors general immigration policy compliance. Also, for most countries, consular offices are involved in cases requiring visa issuance.

3. What is the basic procedure used to obtain a Temporary Work Permit?

This varies greatly from country to country. Some countries have a very elaborate multiple-step procedure (e.g. U.S., U.K.) while others operate more simply with effective decision making vested in case by case discretion in a single office (e.g. Australia, Mexico, Hong Kong).

4. What conditions or restrictions apply to the worker or employer?

In most countries, temporary work permits are limited to specific employers and specific positions and any changes must be authorized by appropriate government authorities.

5. What is the duration of validity of a Temporary Work Permit?

Validity periods vary greatly from country to country and category to category. Most allow at least 1 year validity with renewals or possible extensions of up to at least 3 or 4 years. Many allow eventual conversion into a permanent or indefinite work authorization category, usually combined with change to a permanent residence immigration status.

6. In general, what is the degree of difficulty or probability of success of well-prepared applications for the Temporary Work Permit and Temporary Work Visa categories most frequently used by employers of foreign nationals?

For most categories in most countries, well-documented, well-qualified cases enjoy good success. Factors improving success prospects include the employer's positive past "track record" using the system, size of employer (larger is better), managerial, executive or key technical or proprietary skills of the sponsored worker and higher formal education of the sponsored worker (especially Bachelor's degree or higher). Many countries target certain source countries for stricter or more liberal treatment.

7. Currently, about how long does it take to obtain issuance of a Temporary Work Permit or Temporary Work Visa?

This varies considerably, but for most countries the most frequently used temporary work permits can be obtained within a range of from 2-3 weeks to 2-3 months. In most countries some type of expedited or emergency processing is available in special cases.

8. Currently, what are the typical approximate costs to the employer and worker to obtain a Temporary Work Permit or Temporary Work Visa?

This varies greatly from country to country, and from category to category as well as from case to case. Nevertheless, for the most frequently used categories, the combined total of filing fees, costs and the expense of local immigration legal counsel are roughly comparable to the U.S. or, in some cases less expensive. For example, current estimates for the countries surveyed range from \$1,000 or less to \$4,000 or more for some commonly used work categories.

9. Is the Temporary Work Permit procedure a separate process from the Temporary Work Visa procedure?

This varies from country to country, but most countries have either a separate formal Labor Department Approval process or integrated consideration of local labor market protection concerns as a part of the process.

10. Are there Tax Issues that foreign temporary workers or their employers need to be especially aware of?

Advance tax planning is strongly advised before any international assignment. Typical issues include treatment of foreign source income, and Social Security Tax Equalization Treaty effects among others.

11. Are there Local Employment Law issues that temporary workers or their employers need to be aware of?

In most countries, foreign workers receive the same treatment and protections as local employees. Note that most countries in the world do not follow the U.S. model of “employment at will”. Many U.S. employers have been unhappily surprised by the extensive financial compensation or penalties that other countries require for discharged workers.

12. Are there other potential problems that foreign temporary workers or their employers should be especially wary of?

Even the most experienced sailors use the services of a local harbor pilot when entering unfamiliar ports. Immigration lawyers guiding employers or workers into other countries are likewise well-advised to obtain good advice from reliable local sources on immigration, visas and other related issues (e.g. Special Customs Rules (Argentina and Mexico), Special Housing Concerns (Israel), Repatriation Costs (Hong Kong), and strict Anti-Discrimination laws (Australia)).

13. Are immigration lawyers able to provide assistance with the work permit process?

In all of the countries surveyed, qualified immigration lawyers have a role to play in advising and helping employers to submit approvable cases to the appropriate government authorities. In most cases, the services of qualified local immigration counsel can be obtained on a referral or collaborative co-counsel basis.

14. Are immigration lawyers customarily used by multinational employers to assist with the work permit process?

For most of the countries surveyed, the immigration lawyers reported that multinational employers either routinely use the assistance of local immigration counsel or increasingly are using immigration lawyers to help with the visa/work permit process.

International Quick Reference Charts

	Argentina	Australia
Range of Temporary Work Permit options?	Two Basic Categories: 1. "Temporary Work Visa" (usually 1-3 years validity, renewable) 2. "Transitory Work Permit" (for completion of specific job)	Sixteen different sub-categories, most frequently used are: 1. "413"- Executive Visa (Senior level Executive) 2. "414"- Specialist Visa (Skilled Worker-requires proof of local labor shortage) 3. "411"- Exchange Visa (Exchange of Skilled Workers between Australian company and overseas Affiliate) 4. "456"- Business Short Stay Visa (short term work)
Key Government Offices involved?	1. Ministry of Foreign Affairs (through Argentine consulates) 2. National Migration Board (real decision maker) part of Ministry of Interior	Sole Visa Authority is Ministry of Immigration and Ethnic Affairs. "414" Specialist Visa Applications are reviewed by the Department of Education, Employment and Training and by Commonwealth Employment Service.
Basic procedure?	Two Methods: 1. Worker may apply at Argentina consulate in worker's country of residence. 2. Employer may apply to National Migration Board in Argentina for work permit. Work permit must then be presented at consulate for visa.	For most categories, employer sponsorship and advance labor market testing is required. Employer applies to Department of Immigration in Australia. If approved, worker must file personal visa application at consulate.
Difficulty to qualify?	Properly documented applications usually approved, but nationals of certain countries have special problems (e.g. former Soviet Union, China, Viet Nam, Africa)	Varies greatly. Key factors are Employer's past sponsorship experience, nature of job, type of employer, worker qualifications and quality of documentation. First time sponsors often asked for extensive information. Government especially wants to enforce plans for training Australian workers.
Conditions or Restrictions?	Workers cannot change jobs unless OK'd in advance by National Migration Board. Employers prohibited from hiring unauthorized foreign workers.	413 "Executive", 414 "Specialist", 411 "Exchange Visa" are employer and position specific. Premature termination of employment requires prompt notice to government.
Duration?	1. "Temporary"- 1-3 years, usually 1 year to start, renewable locally) 2. "Transitory"- project specific, time varies, renewable)	Varies. Most 414 "Specialist" Visas for 2 years maximum, 413 "Executive" Visas for 4 years maximum, 411 "Exchange" Visas for 2 years maximum. In certain cases visas may be renewed once.
How long to obtain?	Ranges from a few weeks to 4-6 months depending upon case facts.	Varies greatly. 3-4 weeks to 3 months. Expedited processing may be possible.
Use of Immigration counsel?	Use of Immigration Counsel permitted. Most Multinational employers use assistance of immigration counsel.	No person, lawyer or non-lawyer, can provide immigration advise for a fee unless duly registered as a "Migration Agent". Multinational employers customarily use immigration counsel.
Employment Law, Tax and other issues to watch?	Foreign workers generally treated same as Argentina nationals. Note Binational Income and Social Security tax treaties. Be sure to renew work permit early. Be sure to enter with proper special visa to obtain Special Customs Tax exemption.	TAX- Good idea to seek advice of Australian Tax Accountant. EMPLOYMENT LAW- Watch for strict Industrial laws regarding summary dismissal of employees and highly developed Anti-Discrimination Laws.
Information provided by:	Pablo Kaufer Barbé Buenos Aires, ARGENTINA	Arnold Conyer Sydney, AUSTRALIA

	France	Hong Kong
Range of Temporary Work Permit options?	3 main categories: 1. "The Introduction"- New hire recruited abroad by French Employer for indefinite time. 2. "The Detachment"- Professional or Technician seconded by employer to a French Company for 1 year. 3. "The Merchant Card"- Manager to work for French Company. Note: Work Permit must be combined with separately issued residence permit "carte de séjour". Note E.U. Nationals generally can work in France.	4 main categories: 1. Employment (Investor) Visa 2. Employment Visa 3. Employment Visa (Domestic) 4. Training Visa (6 months or less)
Key Government Offices involved?	1. DDTE (Direcion Départementale du Travail et de l'Emploi) (Department of Labor and Employment) 2. ANPE (local unemployment office) 3. OMI (Office des Migrations Internationales) 4. French Consular Posts	1. Hong Kong- Immigration Department 2. British Consulates
Basic procedure?	Some categories require approval of local unemployment office and DDTE (Employment Ministry) (Similar to U.S. Labor Certification). Special rules for Managers. Most case filing is with the French consulate or local employment office.	Employment visas generally require employer sponsor and proof of labor shortage. Formal process involves the British consulate and/or the Hong Kong Immigration Department. May be able to arrive as visitor and change status to work visa in Hong Kong.
Difficulty to qualify?	Varies with the category and case facts. Easier for larger companies, higher salaried positions and special technical expertise. "Merchant Card" usually OK'd for Americans.	Well-documented cases with sponsoring large multinational employer usually succeed especially if the position requires Bachelor's degree or managerial experience. Credible employer's declaration of local labor shortage and worker's claimed credentials usually accepted.
Conditions or Restrictions?	"The Detachment" is limited to a specific employer. Other categories generally not limited to specific employer.	Work Visas are employer-specific. Workers can be prosecuted for unauthorized work.
Duration?	Varies. Detachment- 1 year, renewable for 6 months Introduction- 3 successive 1 year renewals then 10 year period Merchant- indefinite but visa is for three 1 year periods then 10 years.	Initially one year. Extensions possible in 2 year increments.
How long to obtain?	Varies with category- 6 weeks to more than 6 months. "Merchant" 3-8 months, "Detachment" approximately 6 weeks, "Introduction" 2- 3 months.	Usually 6-8 weeks.
Use of Immigration counsel?	Many multinationals use outside immigration counsel or in-house expert. French language skills are especially important.	Most employers use outside immigration counsel or an in-house expert, especially for first time. Locally knowledgeable immigration counsel especially useful because of vast discretion of Hong Kong Immigration Department Officials.
Employment Law, Tax and other issues to watch?	Some U.S. workers can avoid high French Social Security taxes. Note Social Security Tax Equalization Treaty. Many French labor law protections for workers apply especially for termination.	Note low local taxes and employer's responsibility for repatriation to home country. Note special rules for PRC (more restrictive) and UK (more generous) nationals.
Information provided by:	Gary Shubert Paris, FRANCE	Eugene Chow HONG KONG

	Israel	Mexico
Range of Temporary Work Permit options?	Only one basic temporary work visa: (B1 Foreign Worker).	13 different work permit categories. Most are employer-specific and job specific. Main categories are: 1. Visitors- FM3 2. Technicians and Skilled Workers (FM3, FMN, FM2) 3. Confidential Employees (FM3, FM2) (usually for Supervisors, Executives or Managers)
Key Government Offices involved?	1. Employment Service (Part of Labor Ministry) 2. Interior Ministry	1. National Immigration Institute 2. Ministry of Foreign Affairs (Consulates)
Basic procedure?	Employer contacts Government Employment Service (part of Labor Ministry). After recruitment effort reviewed by local office, district office and national office, then, if favorable report, Interior Ministry issues work visa. Employer-specific and job specific. Any changes must be approved by Employment Service.	Formal petition or letter based. Usually involves prior review and approval by the National Immigration Institute and consulate which issues visa. Special provisions for Canadians and U.S. nationals (more liberal).
Difficulty to qualify?	Variable. Note considerable discretion in multi-level bureaucratic reviews and vigorous government efforts at local labor market recruitment.	For nationals of non-restricted countries success rate is high with proper documents and qualifying employer. Problems for nationals of restricted countries (e.g. Iran, Iraq, Cuba.)
Conditions or Restrictions?	Work permits are employer-specific.	Note Mexican Labor Law requires 90% of workers in Mexican Company to be Mexican with limited exceptions (e.g. Manager/Executive). Any changes in work must be OK'd by National Immigration Institute. Technical workers required to instruct at least 3 Mexicans in skill area.
Duration?	Initial 6-12 months. Extendable up to 2 years.	Most are 30 days to one year. Visitors (limited to 30 days maximum visit), Renewable.
How long to obtain?	Approximately 2 months.	Usually 1 week to 6-8 weeks.
Use of Immigration counsel?	Recommended especially for multinational employers to avoid delays and problems with multi-level bureaucracies.	Yes, recommended to avoid bureaucratic delays. Most multinationals use immigration counsel.
Employment Law, Tax and other issues to watch?	Note Double Tax Treaty U.S.-Israel and Extensive Worker Protections under Israeli Labor Laws especially maternity leave, termination rights, other benefits. Note Housing purchase and rental problems. Consider consultation with Real Estate Lawyer.	Note customs issues regarding import of household goods and Mexican tax and required employer contribution. Note restrictions on foreign land ownership on border/coast. Recommended to consult CPA regarding tax treaty issues.
Information provided by:	Liam Schwartz Tel-Aviv, ISRAEL	Federico Vergara Ramirez Mexico City, MEXICO

	Spain	United Kingdom
Range of Temporary Work Permit options?	Two Basic Types: 1. Permit A: "limited duration jobs" (for any temporary job). 2. "Seasonal Activities"- usually agricultural. Sometimes "Collective Permission" possible, for groups. Note E.U. Nationals generally can work in Spain.	Many Visa Categories (approx. 30). Several Work Authorization options by separate process: A. "Mainscheme" Category 1. "Normal Skill Level" - requires University degree plus 2 years post-degree full-time work experience abroad. (Also generally requires proof of U.K. labor shortage similar to U.S. Labor Certification process.) 2. "Inter-Company Transfers"- More liberal rules for inter-company transfers with "essential experience" similar to U.S. L-1 "specialized knowledge" or E-1/E-2 "essential skills" standard. Two subtypes "Essential Experience" and "Career Development". 3. "Key Workers"- Despite name, used for lower skilled but "essential" workers. Dead end category with 3 year maximum. Requires full labor recruitment effort- similar to U.S. H-2B. B. TWES "Training and Work Experience Scheme" (Note: can <u>never</u> lead to permanent status in U.K.) a. "Training Permit" - similar to U.S. J-1 training. Up to 3 years to start, with possible extensions. b. "Work Experience Permit"- Usually maximum of 1 year. Absolute limit of 2 years. Similar to U.S. H-3 Trainee. Note E.U. Nationals generally can work in U.K.
Key Government Office involved?	1. Provincial Direction of Labor 2. Alien's Office of National Police in each Province 3. General Direction of Migration 4. Ministry of Foreign Affairs (Visas).	1. Home Office Immigration Department (in country cases) 2. Immigration Service (airports and seaports) 3. Entry Clearance Officers 4. Department for Education and Employment - Overseas Labour Service (OLS)
Basic procedure?	Usually apply first for visa at consulate then submit work permit application to Provincial Director of Labor office in Spain.	Two tier process- Substantive "work permit" or "work permission" decisions made by Overseas Labour Service. Permission to enter or stay or change status granted separately by immigration authorities.
Difficulty to qualify?	Usually well-qualified and well-documented applications are successful.	Well-qualified, well-documented cases usually succeed. Note except in "Career Development" category, OLS expects to see a high salary for temporary workers reflecting claimed high/rare skills.
Conditions or Restrictions?	Work Permits usually limited to one employer and one geographic area. Limited to certain employers. Not used by Managers and Executives.	Work permission is employer-specific and job-specific.
Duration?	Up to maximum of 9 months including extensions.	Up to 4 years, but trend is toward shorter periods of approval.
How long to obtain?	Usually 2 to 3 months.	3 weeks to 10 weeks. Expedites possible.
Use of Immigration counsel?	Increasing use of Immigration Counsel by multinationals. Some use of "Gestorias" (Administrative Advisors) Note: Plan to file at least 3 months in advance to avoid bureaucratic delays.	Frequent use of Immigration Lawyers.
Employment Law, Tax and other issues to watch?	Employment law regulations are very strict in Spain. Unfair termination subject to compensation determined by Special Labor Courts.	Note possibilities of derivative claims to E.U. or Commonwealth nationality to avoid need for work permits (e.g. Italian, Irish ancestry) of worker or spouse. Note U.K. Tax Year ends on April 5, consider advantageous planning for tax year. Strong laws regarding termination rights of dismissed workers. New Employer Sanctions Scheme starts in 1996.
Information provided by:	Fernando Scornik Gerstein Madrid, SPAIN	Karen Sturtivant London, ENGLAND

	United States
Range of Temporary Work Permit options?	<p>Many options. Most are employer-specific. Many are also occupation-specific and work-site specific. Most frequently used are the:</p> <ol style="list-style-type: none"> 1. H-1 Temporary Worker "Specialty Occupation"- requires equivalent to 4 year U.S. University Degree and Labor Market Wage Compliance. 2. L-1- Intra-Company Transfer (requires 1 year prior work for same or affiliate employer outside the U.S. within 3 years prior to U.S. entry) 3. E-1/E-2 Treaty Trader/Treaty Investor, with subcategories for Principals (Owners), Executives, Managers and "essential skills" employees. 4. H-2B Temporary Worker (No minimum skill level, but requires proof of local labor shortage.) 5. F-1 Student- Several types of work permits possible for full-time students. 6. J-1/J-2 "Exchange Visitor"- especially popular with major universities for researchers, also used by certain international companies. 7. TN- for Canadian and Mexican nationals only- generally similar to H-1 but without Labor Market Wage Compliance rules.
Key Government Offices involved?	<ol style="list-style-type: none"> 1. INS- Immigration and Naturalization Service 2. DOL- Department of Labor 3. SESA- Local State Unemployment Office 4. DOS- Department of State- Consulate
Basic procedure?	Process is formal. Most categories require advance written petition to INS with substantial supporting documentation. Usually require employer sponsorship. Some categories also require Labor Department or other approval.
Difficulty to qualify?	Varies greatly depending on case-specific facts and documentation. Usually, well-qualified cases are successful but documentation required can be extensive and case-specific decisions can be quirky/idiosyncratic.
Conditions and Restrictions?	Most temporary work permits/work visas in the U.S. are employer-specific and job specific, although there are several which are not. In addition, many work authorizations are conditioned on other factors such as continued full-time study for F-1 students, continued J-1 status of J-1 principal in case of J-2 dependents, nationality of employer ownership (E-2 and E-1) among others.
Duration?	Varies greatly. Ranges from 1 day to 3 years or more. Most categories initially approved for 1 to 3 years.
How long to obtain?	Varies. Ranges from same day approval to one to two months or more for most temporary work categories. Expedites possible in special cases..
Use of Immigration counsel?	Most employers have assistance of outside immigration lawyer or in-house expertise.
Employment Law, Tax and other issues to watch?	Plan in advance. Start at least 60-90 days before work permit needed if possible. Watch for frequent changes in policy, regulations and procedure. Generally, U.S. tax rules apply to all U.S. source income. Good idea to consult tax counsel on tax issues and employment law counsel on labor and employment law compliance.
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