



## APRIL 2016 GLOBAL IMMIGRATION UPDATE

*Posted on April 4, 2016 by Cyrus Mehta*

### Headlines:

**CHINA** – Shanghai has simplified the process for individuals requesting work permits and residence permits.

**FRANCE** – A new law on the rights of foreigners in France was promulgated on March 7, 2016.

**ITALY** – A startup work permit fast-track procedure is now available also to foreigners already residing in Italy.

**PERU** – The European Union has signed a visa waiver agreement with Peru.

**SOUTH AFRICA** – There have been several developments in business travel.

**TURKEY** – New regulations have been published.

**UNITED KINGDOM** – Several developments have been announced.

### **Details:**

#### **CHINA**

*Shanghai has simplified the process for individuals requesting work permits and residence permits.*

For individuals already in Shanghai who are initiating a new work and residence permit process, a Z visa is no longer required before applying. According to the simplified procedure, the sponsoring entity first obtains an Alien Employment License and the applicant attends a medical exam in Shanghai. Then, instead of sending the applicant out of China to apply for a Z visa and then reenter to start employment, the applicant can apply for a one-year residence permit with the Alien Employment License and medical report. Once the residence permit is issued, the applicant must apply for the work permit within 10 days or risk

automatic cancellation of the residence permit. The applicant can also start working as soon as the Alien Employment License is issued. Individuals outside of China who already have a valid visa may enter China using the existing visa and then follow the steps for residence permit and work permit applications. Individuals who do not currently have a Chinese visa should apply for a Z visa to enter Shanghai.

Shanghai has also adopted a new procedure for work and residence permit transfers. The new process adds a requirement to apply for a temporary visa within 10 days after the applicant submits a work permit transfer request. Failure to comply with this requirement may result in a fine or a warning from the immigration authorities. The temporary visa application takes seven business days to process, during which Shanghai immigration authorities will keep the applicant's passport. The temporary visa is valid for a 30-day stay with no entries, and applicants must apply for a residence permit transfer during the validity of the visa. A travel warrant will be issued to allow applicants to travel within China during these seven business days. However, the new procedure restricts applicants' ability to travel internationally during the permit transfer process.

Shanghai has also passed a new policy allowing cohabitating partners to apply for the dependent residence permit. A relationship document legalized by the Chinese embassy is required.

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## **FRANCE**

*A new law on the rights of foreigners in France was promulgated on March 7, 2016.*

The Law on the Rights of Foreigners in France was promulgated on March 7, 2016, and published in the Official Gazette on March 8, 2016. Some provisions reshuffle visa categories and duration of residence permits and the system of work permits on labor migration. Among other things, this law creates a "Talent Passport" category for highly skilled workers, which provides for a residence permit valid for up to four years.

Entry into force of these provisions has been postponed to a date to be decreed by November 1, 2016. In the absence of implementation, uncertainty exists about changes to the current immigration processes.

## Creation of "Talent Passport"

A Council of State decree will set the conditions for issuing the Talent Passport card and determine compensation levels. Talent Passport residence will be valid for up to four years and will be issued in the following circumstances:

- Status change for a student with a master's degree
- EU Blue Card status
- Intra-corporate transfer (with local contract in France)
- Scientist status
- Foreign national with a master's degree creating a business in France
- Foreign national with an innovative project recognized by a public body
- Foreign national with direct investment in France
- Legal representative (employee or agent)
- Artist
- Foreign national whose international reputation is established (scientific, literary, artistic, intellectual, educational, or sports).

The law abolishes the need to apply for a work permit for the above categories, most of which are currently subject to work permit adjudication by the labor authorities having jurisdiction over the place of work in France. We do not yet know how eliminating the work permit adjudication will change the adjudicating authority and the overall immigration process. The Council of State decree will determine the adjudicating authority and the process.

Family members may be issued a card authorizing the exercise of a professional activity. The duration of the card is based on the duration of the "Talent Passport" card of the spouse.

## Intra-Corporate Transfers (ICT): Employees and Trainees

This new category is based on the implementation of European Directive No. 2014/66/EU of May 15, 2014, into national law. It concerns three possible cases of intra-corporate transfers:

A "seconded employee ICT" residence permit is issued to a foreign national who comes to France as part of a detachment mission (within the meaning of Article L 1262-1 of the Labor Code) to occupy a management position or provide expertise to the affiliate of the same corporate group (with prior employment of at least three months). The duration of the card is based on the duration of the assignment in France, with a maximum period of three years

(non-renewable).

A "trainee ICT" residence permit is issued to a foreign national under a training agreement approved by the appropriate administrative authority in the framework of an internship in an institution or a company of the same group (with prior employment of at least three months and sufficient financial means). The duration of the card is based on the duration of the assignment in France, with a maximum period of one year.

An "ICT mobile employee" or ICT mobile trainee" residence permit is issued if the foreign national possesses a residence permit "ICT employee" or "ICT trainee" in another Member State of the European Union. He or she may be assigned to France for a maximum period of three years for an employee and one year for a trainee. The stays in other Member States are included in the total allowable period.

Family members of ICTs may qualify for a residence permit authorizing the exercise of a professional activity.

### **No Work Permit Needed for Assignments of Less Than Three Months in Certain Fields**

Foreign nationals who come to France to work for up to three months in fields to be determined by decree will no longer need work permits.

### **Three Categories of Residence Permits Authorizing the Exercise of a Professional Activity**

Article L313-10 of the CESEDA (*Code de l'entrée et du séjour des étrangers et du droit d'asile*) will authorize work under three categories of cards (instead of seven at present):

1. The "salaried" card with annual validity to the holder of an undetermined duration contract
2. The "temporary worker" card issued to the holder of a fixed-term or temporary secondment in France with validity for the duration of employment contract, up to a maximum of one year
3. The "entrepreneur/professional services" card for self-employment, which is viable and provides the foreign national adequate resources

Particularly with respect to the provisions on the Talent Passport and ICTs, the implementation decrees should provide the needed clarification and guidelines

to determine the relevant adjudicating authorities, changes to the current process, documentation requirements, and applicable timelines.

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## ITALY

*A startup work permit fast-track procedure is now available to foreigners already residing in Italy.*

A new program for foreigners already residing in Italy who intend to set up innovative start-ups has now been implemented. Following the success of the Startup Visa program, a fast-track procedure is available also to foreigners already residing in Italy who can apply for a "start-up permit" without having to leave Italy and obtain a new visa.

The program, Italia Startup Hub, is available to holders of any residence permit. The procedure differs according to the residence permit type:

- Holders of residence permits for study, internship, and/or training and EC long-term residence permits issued by another EU member state must apply for the current permit conversion following a procedure handled by the Immigration Office (*Sportello Unico Per L'immigrazione*). This procedure is not yet fully implemented. However, as of now, it is expected to include the following steps:
  1. Applicant writes to [italiastartuphub@mise.gov.it](mailto:italiastartuphub@mise.gov.it), attaching:
    - An application form, describing academic and professional background, and the kind of innovative business he or she intends to start or to join as working shareholder; and
    - Documentation proving possession of at least 50,000 euros.
  2. The Italia Startup Visa & Hub Committee evaluates the application within 20 days. If the committee approves the application, it issues a certificate of no impediment to conversion.
  3. The non-EU citizen must file an application through the Ministry of Interior website (Form Z (*Domanda di verifica della sussistenza di una quota per lavoro autonomo e di certificazione attestante il possesso dei requisiti per lavoro autonomo* □ *Soci, amministratori di società*)). The applicant will then receive a confirmation email and wait for the immigration office to set an appointment.

At the appointment, the applicant must submit:

- Copy of the ISH Certificate of No Impediment;
- Residence permit;
- Documentation proving suitable accommodation (e.g., hotel booking);
- Documentation proving an income above the minimum level set by law for the exemption from National Health Service contribution (8,500 euros); and
- Passport or Italian ID.

4. Further to the appointment above, the applicant files the residence permit conversion application at the post office and receives receipts of application and an appointment to give fingerprints at the local immigration police department. After this step, the self-employment residence permit is issued in 2-4 months.

- For holders of permits for work and family reasons, the procedure is handled directly by the police immigration department (*Questura*):

1. Applicant writes to [italiastartuphub@mise.gov.it](mailto:italiastartuphub@mise.gov.it), attaching:

- An application form, describing academic and professional background, and the kind of innovative business he or she intends to start or to join as a working shareholder; and
- Documentation proving possession of at least 50,000 euros

2. The Italia Startup Visa & Hub Committee evaluates the application in 20 days. If the committee approves the application, it issues a certificate of no impediment to conversion.

3. Further to the appointment above, the applicant files the residence permit conversion application at the post office and receives receipts of application, and an appointment to give fingerprints at the local immigration police department. After this step, the self-employment residence permit is issued in 2-4 months.

The program is also intended for foreigners who wish to become shareholders of pre-existing innovative startups in Italy.

At the end of the process, the applicant will be issued a self-employment residence permit to set up an innovative startup. A limited number of startup

permits are issued each year based on immigration quota decree provisions.

A dedicated website will be available shortly ([italiastartuphub.mise.gov.it](http://italiastartuphub.mise.gov.it)).

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## **PERU**

*The European Union has signed a visa waiver agreement with Peru.*

On March 14, 2016, the European Union (EU) signed a reciprocal short-stay visa waiver agreement with Peru, effective the next day. The agreement allows visa-free travel for Peruvian nationals to the EU for short stays of up to 90 days as well as for EU citizens traveling to Peru. On the EU side, Dimitris Avramopoulos, Commissioner for Migration, Home Affairs and Citizenship, and Bert Koenders, Dutch Minister of Foreign Affairs, representing the Council Presidency, signed the agreement together with Peruvian Minister of Foreign Affairs Ana María Sánchez Vargas de Ríos. The signing ceremony took place in the presence of EU High Representative/Commission Vice-President Federica Mogherini and the President of Peru Ollanta Humala Tasso.

Ahead of the signing ceremony, High Representative/Vice-President Mogherini said, "This will simplify the lives of many people and create more opportunities for both Peru and the EU—for tourism, for investments and for our contacts. This agreement and the one signed with Colombia only a few months ago show how close we feel to Latin America. We share so much culture, so many interests and values—and today we make the friendship between our peoples even easier."

Commissioner Avramopoulos said the agreement "will make visa-free travel to the EU a reality for the citizens of Peru who I know have been very much looking forward to this moment. I congratulate the Government of Peru for the swift and successful issuing of biometric passports for its citizens since last month. This was an important condition for the EU to approve this visa waiver. It is important that the biometric passport system is fully completed by the summer. I am confident that this agreement will promote tourism, trade and business contacts between the peoples of our two great continents."

The visa waiver will not apply to the United Kingdom and Ireland.

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## **SOUTH AFRICA**

*There have been several developments in business travel.*

In recent months, there have been several developments of interest to business travelers to South Africa:

- The Department of Home Affairs has implemented the International Civil Aviation Organization's (ICAO's) requirement that as of November 24, 2015, only machine-readable travel documents will be accepted at any South African port of entry. The ban on non-machine-readable travel documents extends to passports that have been extended or renewed manually, as some countries still allow. The Department announced that this restriction does not apply to travelers using Emergency Travel Documents. The Department also announced that persons who had entered South Africa on non-machine-readable travel documents before November 24, 2015, will be allowed to depart. In addition, persons who enter South Africa on machine-readable travel documents and who lose their passports in-country can depart with Emergency Travel Documents.
- An amendment of the Immigration Act in 2014 provided that the spouse of a South African citizen who had entered the country on a short-term visitor visa (for up to 90 days) could not apply from within South Africa to change status to that of a long-term visitor (for up to two years) to accompany the South African spouse. In February 2016, the High Court ruled, however, that it is now lawful for a foreign spouse to apply for such a change of visa conditions from within the country.
- Also in February 2016, the Department announced that it was immediately withdrawing a dispensation to persons holding asylum-seeker permits that had allowed them to apply for temporary residence (so long as they qualified for the relevant visa)—and with retroactive effect. The withdrawal of the dispensation is now the subject of an urgent High Court challenge to be heard at the end of April 2016.
- Finally, the Minister of Home Affairs is expected to announce shortly a Green Paper on migration. This will constitute the first formal re-thinking of immigration policy in South Africa since the revision of apartheid-era immigration law in the late 1990s.

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## **TURKEY**

*New regulations have been published.*

The Application Regulations of Law 6458 on Foreigners and International Protection was published in the Official Gazette on March 17, 2016 (No: 29656). The regulations reiterate to a large extent the Migration Directorate's protocol and procedures implemented over the past 10 months. This is particularly the case regarding supporting documents for residence permit applications and the fact that only attorneys can submit applications on behalf of applicants. Highlights of these developments include:

- If a visa is not used within six months, it is invalid.
- If a foreigner overstays but pays a penalty upon leaving Turkey, he or she should not be banned from reentry.
- An applicant may apply for a residence permit up to 10 days after expiration of a residence permit or visa.
- When a work permit expires or is cancelled, an applicant has 10 days to file a new residence permit application.
- A residence permit for a baby of foreign parents born in Turkey may now be filed within 180 days with no penalty (formerly 30 days). Also, if the child departs before the residence permit is issued, no entry ban can be implemented.
- Residence permit amendments (name, address, marital status) must be reported within 20 days.
- If foreigner holding a residence permit moves to another city, he or she must apply for a new residence permit instead of filing an address amendment.
- Sons and daughters 18 years of age or older can file for a dependent residence permit.

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## **UNITED KINGDOM**

*Several developments have been announced.*

### **Changes to Immigration Rules**

The government published its latest Statement of Changes to the Immigration Rules on March 11, 2016. Contrary to expectations, none of the widely anticipated new measures was introduced following the recommendations of the Migration Advisory Committee (MAC) in its Tier 2 Review report in January.

There may not have been sufficient time for the government to fully consider the MAC's recommendations, given that attention is currently focused on the upcoming referendum on the United Kingdom's (UK) membership in the European Union (EU). This is good news for all Tier 2 Sponsors, as the status quo is being maintained for the time being.

There are some minor changes to Tiers 2 and 5, summarized below:

Tier 2 changes. One change announced is in relation to the annual limit that applies to the Tier 2 (General) restricted category. To cater to high demand over the summer months, the allocations have been revised to better reflect seasonal demand over the year. The overall limit (20,700 places per year), however, remains unchanged. This may alleviate the problems encountered last summer when the annual limits cap was breached in June 2015, which meant that a number of recent graduates and other lower-paid applicants were not able to gain sponsorship.

Provisional monthly allocations under the Tier 2 (General) limit are:

<b>Application period</b>	<b>Provisional monthly allocation</b>
6 March – 5 April	2,200
6 April – 5 May	2,000
6 May – 5 June	2,000
6 June – 5 July	2,000
6 July – 5 August	2,000
6 August – 5 September	2,000
6 September – 5 October	1,500
6 October – 5 November	1,500
6 November – 5 December	1,500
6 December – 5 January	1,500
6 January – 5 February	1,500
6 February – 5 March	1,000

As in previous years, an annual uplift in line with wage inflation is being applied to the earnings threshold for Tier 2 (General) and Tier 2 (Sportsperson)

settlement applications. The uplifted threshold will apply to settlement applications made beginning April 6, 2021.

The UK government intends to review other Tier 2 salary requirements as part of its response to the review of Tier 2 published by the MAC on January 19, 2016.

Tier 5 change. The maintenance requirements under all the Tier 5 (Temporary Worker) routes are being amended to clarify that by a sponsor certifying maintenance they are confirming the applicant will not claim public funds during their period of leave.

### **Fee Increases**

Fee increases for visas, immigration and nationality applications, and associated premium services took effect starting March 18, 2016. The main changes are:

Small increases (2%) for visit, study, and work visas:

- Entry clearance fees for Tier 2 rose from £564 to £575 for a three-year visa and from £1,128 to £1,151 for a visa up to five years
- In-country Tier 2 further leave to remain rose from £651 to £664 for a three-year visa and from £1,302 to £1,328 for a visa up to five years. The same fees are charged for each dependent

Priority processing fees rose by 25%:

- Same-day premium processing fees for leave to remain applications rose from the previous £400 to £500
- Priority postal processing fees for leave to remain applications increased from the previous £300 to £375
- Priority processing fees for entry clearance as a Tier 2 applicant rose from £120 to £150
- Super-priority same-day processing fees for entry clearance rose from £600 to £750

Fees for settlement and naturalization as a British citizen increased by 25%:

- For a main applicant and every dependent applying for settlement, the fees rose from £1,500 to £1,875 each. If same-day processing is required, each applicant must pay £2,375

- For a main applicant and every dependent applying for naturalization, the fees rose to £1,156, up from the previous fee of £925

Fees for all sponsor licensing applications are unchanged.

The new fees for applications can be found in the fees table at <https://www.gov.uk/government/publications/visa-regulations-revised-table>.

### **Further Details Re the Immigration Skills Charge**

The UK government proposes to introduce an Immigration Skills Charge (ISC) for Sponsors who hire Tier 2 migrants. Provisions relating to the Charge are included within the Immigration Bill. During the House of Lords debate on March 21, 2016, the following details emerged concerning the proposed charge:

- It will be set at £1,000 per Tier 2 migrant per year (£364 for small businesses and charities);
- It will be collected by the Home Office, most likely at the visa application stage when the Immigration Health Surcharge is also collected; and
- Exemptions will apply to PhD-level jobs and graduates switching from Tier 4 to Tier 2.

The details of the Charge have yet to be confirmed by the government and will not be finalized until regulations are published in the summer. The Immigration Bill is likely to pass into law in May 2016, with the ISC provisions coming into force in July 2016. There is ongoing debate about a phased introduction for the public sector, including teachers and nurses, to give those sectors an opportunity to hire greater numbers of staff from the resident labor market to lessen the burden of the Charge. The House of Lords also debated the Apprenticeship Levy and whether this would be a more appropriate mechanism to raise funds to up-skill the resident labor market. It is uncertain whether companies who pay the Apprenticeship Levy and employ foreign labor would also have to pay the ISC. Would this lead to double payments for the same purpose? Whatever the final details of the ISC, it is not expected to be implemented for some time, but it will represent an expense for Sponsors and should be factored into budgets for migrants taking positions in the UK.

### **Immigration Health Surcharge for Australian and New Zealand Nationals**

Beginning on April 6, 2016, Australians and New Zealanders who are planning

to spend more than six months in the UK, or who are applying from within the UK to extend their stays, must pay a £200 annual surcharge as part of their applications. These nationalities were initially exempt from this surcharge when it was first rolled out in April 2015.

Migrants aged between 18 and 30 applying to come to the UK on the Youth Mobility Scheme will benefit from a discounted rate of £150 per person per year.

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