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US IMMIGRATION & NATIONALITY LAW

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UNITED KINGDOM – This article briefly notes hot topics for 2017.

Feature Article:

ELECTRONIC TRAVELER SYSTEMS: AN OVERVIEW

This article provides an overview of recent developments with respect to electronic traveler systems in several countries. Many countries do not have

electronic traveler systems similar to the Electronic System for Travel Authorization in the United States.

Belgium

Belgium does not have an electronic traveler system similar to the Electronic System for Travel Authorization in the United States. Belgium has implemented European legislation, including EU Directive 2016/681 of April 27, 2016, on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offenses and serious crime. An Act, dated December 25, 2016, was published in the Belgian Official Journal of January 25, 2017 (PNR Act).

The PNR Act provides that passenger carriers of all transport sectors (air and sea, trains, road transport), as well as travel operators/companies, must communicate passenger data to the Passenger Information Unit (PIU). The PIU, which will be part of the federal Ministry of Interior Affairs, will store the data in a passenger database and analyze it for security purposes. The PNR Act provides privacy guarantees, such as rules for the organization of the PIU, and a limited list of purposes for which passenger data can be processed and analyzed.

The PNR Act has not yet taken effect. A Royal Decree will determine the effective date for each transport sector and for travel operators/companies.

Canada

In an effort to enhance border security, in 2011 the Canadian federal government launched the "Canada-United States Perimeter Security and Economic Competitiveness Action Plan," which mentioned the potential implementation of an electronic screening process for all visa-exempt foreign nationals. Effective November 10, 2016, all visa-exempt foreign nationals wishing to travel to Canada by air must obtain an electronic travel document called an Electronic Travel Authorization (eTA) before boarding their flights to Canada. This new measure is designed to allow Canadian authorities to pre-screen all visa-exempt foreign nationals and identify any cause that would make a foreign national inadmissible to Canada. This important initiative is expected to reduce costs for Canadian authorities and delays for travelers by having inadmissibility assessments conducted before a foreign national's arrival in Canada rather than at a Canadian port of entry.

This new obligation to obtain an eTA before air travel applies to all foreign nationals who do not require a Temporary Resident Visa/Visitor Visa to enter Canada. Canadian citizens, Canadian Permanent Residents, and U.S. citizens are exempt from this requirement and can continue to enter Canada using their valid Canadian passports, Canadian Permanent Residency cards, or U.S. passports. In addition to this newly introduced travel measure, Canadian dual citizens must be vigilant when traveling to Canada because they now must travel with their Canadian passports and can no longer enter Canada with the passport of their other country of citizenship. An exception is made for dual Canadian/U.S. citizens, who can continue use their U.S. passports to enter Canada.

An eTA can be obtained online and is usually approved within minutes of applying. The eTA is an electronic document and there is no paper evidence of it. Air carriers are given access to the Canadian Border Services Agency's database to verify whether foreign nationals have obtained the required eTA before boarding their flights to Canada. Foreign nationals should carefully review the accuracy of their information when submitting an application and should be sure to spell their name as it appears on the bottom of the passport (machine-readable portion) rather than using the spelling shown elsewhere on the passport, if the spelling differs.

India

India has launched an e-Tourist Visa (eTV) for travelers whose sole objective of visiting India is recreation, sight seeing, casual visit to meet friends or relatives, short duration medical treatment or a casual business visit.

The eTV is a single entry visa and a visitor can request up to two eTVs per year. The eTV is valid for 30 days from the date of arrival. The holder of the eTV visa may remain in India for a maximum of 30 consecutive days after the initial entry date and it is non –extendable and non-convertible.

Although there is no definition of the term ”casual business”, anecdotal evidence suggests that it could involve short business meetings or attending a conference during the 30-day period.

The e-TV facility is available for nationals of following countries/territories:

Albania, Andorra, Anguilla, Antigua & Barbuda, Argentina, Armenia, Aruba, Australia, Austria, Bahamas, Barbados, Belgium, Belize, Bolivia, Bosnia &

Herzegovina, Botswana, Brazil, Brunei, Bulgaria, Cambodia, Canada, Cape Verde, Cayman Island, Chile, China, China- SAR Hongkong, China- SAR Macau, Colombia, Comoros, Cook Islands, Costa Rica, Cote d'Ivoire, Croatia, Cuba, Czech Republic, Denmark, Djibouti, Dominica, Dominican Republic, East Timor, Ecuador, El Salvador, Eritrea, Estonia, Fiji, Finland, France, Gabon, Gambia, Georgia, Germany, Ghana, Greece, Grenada, Guatemala, Guinea, Guyana, Haiti, Honduras, Hungary, Iceland, Indonesia, Ireland, Israel, Jamaica, Japan, Jordan, Kenya, Kiribati, Laos, Latvia, Lesotho, Liberia, Liechtenstein, Lithuania, Luxembourg, Madagascar, Malawi, Malaysia, Malta, Marshall Islands, Mauritius, Mexico, Micronesia, Moldova, Monaco, Mongolia, Montenegro, Montserrat, Mozambique, Myanmar, Namibia, Nauru, Netherlands, New Zealand, Nicaragua, Niue Island, Norway, Oman, Palau, Palestine, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Republic of Korea, Republic of Macedonia, Romania, Russia, Saint Christopher and Nevis, Saint Lucia, Saint Vincent & the Grenadines, Samoa, San Marino, Senegal, Serbia, Seychelles, Singapore, Slovakia, Slovenia, Solomon Islands, South Africa, Spain, Sri Lanka, Suriname, Swaziland, Sweden, Switzerland, Taiwan, Tajikistan, Tanzania, Thailand, Tonga, Trinidad & Tobago, Turks & Caicos Island, Tuvalu, UAE, Ukraine, United Kingdom, Uruguay, USA, Vanuatu, Vatican City-Holy See, Venezuela, Vietnam, Zambia and Zimbabwe.

Travelers to India on eTV should have a return ticket or onward journey ticket with proof of sufficient funds to support themselves during their entire stay in India.

Note that the eTV is not available to international travel document holders or to applicants with a diplomatic passport. International travelers having either a Pakistani passport or are of Pakistani origin would have to apply for a regular visa at an Indian Mission.

For further details please visit https://indianvisaonline.gov.in/visa/tvoa.html.

Italy

Italy does not have an electronic traveler system similar to the Electronic System for Travel Authorization in the United States.

United Kingdom

The United Kingdom does not have an electronic traveler system similar to the Electronic System for Travel Authorization in the United States. Passport

holders from Kuwait, Oman, Qatar, and the United Arab Emirates (UAE) are eligible to apply for electronic visa waivers (EVWs) permitting them to visit the UK for up to six months for tourism, business, study, or medical treatment.

EVWs may be used only once, and each person traveling to the UK must obtain his or her own EVW (i.e., each member of a family traveling together must apply for and obtain an EVW).

EVW applications may be made online at https://www.electronic-visa-waiver.service.gov.uk/apply/begin (instructions are provided in both English and Arabic) and must be submitted between 3 months and 48 hours before travel to the UK. Individuals should have the following ready before applying:

- A current, valid passport;
- The address in the UK where the applicant will be staying;
- Travel details (flight number, departure/arrival dates and times); and
- An uploadable image of the applicant's passport photo page.

Third parties may apply on behalf of individuals seeking an EVW, but they must also provide their contact details.

Successful applicants will receive an email with a link to download their EVW within 24 hours of submitting the application online. The EVW must be shown before boarding the aircraft, boat, or train, as well as at the UK port-of-entry immigration controls.

If the departure location (airport, port, or train station), or arrival time in the UK (if greater than 8 hours) changes, EVW holders must amend their travel details online. Individuals will need to provide the EVW number and date of birth to make changes.

Country Updates:

BELGIUM

A new Act provides for an increased focus on integration efforts, including mandatory signing of a "newcomers statement" for long-term (greater than three months) residence for some foreigners.

A new Act, which imposes integration efforts on some foreigners who want to reside in Belgium for more than three months, has been published in the

Belgian Official Journal of January 16, 2017. There are two aspects under the Act: the signing of a "newcomers statement" at the time of the initial residence application, and a future "audit" of integration efforts:

- An applicant for long-term (greater than three months) residence must sign a "newcomers statement" in which he or she acknowledges (i) understanding the fundamental values and standards of Belgian society, and (ii) willingness to act in accordance with (French: *agir en conformité avec*/ Dutch: *handelen naar*) these values; and
- The applicant will be informed that he or she must submit proof of his or her integration efforts in the future.

The new rules apply to, for example, third country (non-European Union /European Economic Area) labor migrants, as well as their family members who apply for residence on the basis of family reunification.

Several categories of foreigners are exempt; for example:

- Recognized refugees or beneficiaries of subsidiary protection and their family members;
- EU/EEA (EEA includes EU and Iceland, Liechtenstein, and Norway) citizens and their family members;
- Students;
- Victims of human trafficking;
- Long-term residents (Council Directive 2003/109/EC of 25 November 2003);
- Minors;
- Foreigners who are seriously ill.

Noncompliance and consequences include:

- A refusal to sign the "newcomers statement," which will result in inadmissibility;
- A foreigner who holds a residence permit for a limited term must prove his or her willingness to integrate. This proof must be submitted within the first limited residence term (e.g., for a labor migrant = duration of work permit + 1 or 3 month(s)); failure could be a ground for refusal to renew the residence permit;
- The Minister for Asylum and Migration or the Foreigners' Office (federal department in charge of immigration) can terminate the right to reside if

the authorities find that the foreigner has not made a "reasonable effort" to integrate. The authorities can ask the foreigner to submit information or evidence. The right to reside can be terminated during the four years following the end of the first year after issuance of the limited or unlimited authorization to reside, or following the end of the first year after the authorization to reside in Belgium.

The authorities will assess the integration efforts by taking into account the following criteria, listed in the new Act:

- Attend an integration course, organized by the authority competent for the foreigner's main residence;
- Working in Belgium as employee, civil servant, or self-employed;
- Degree, study certificate or evidence of enrolment in a recognized or subsidized educational establishment;
- Attend a vocational training, recognized by a competent authority;
- Knowledge of the official language of the place, where the foreigner is registered;
- No criminal record;
- Active participation in community life.

If the authorities consider a decision to terminate the right to reside, they must take into account:

- The nature and the strength of the family ties of the foreigner;
- The duration of residence in Belgium;
- The existence of family ties or cultural/social connections with the country of origin.

The new Act took effect, at least in part, on January 26, 2017.

- The "newcomers statement" is not yet effective. The text of the statement has not yet been confirmed. The Belgian federal authorities will have to agree on the text with the French, Flemish, and German-speaking communities (communities are regional authorities, competent for integration);
- The integration obligation will become relevant for all residence applications filed as of January 26, 2017.

With respect to the impact of the new requirements on non-EU/EEA labor

migrants and their family members, labor migrants can probably prove integration efforts because of their work in Belgium. Things could be more complicated for their family members, but a decision to terminate residence must take into account the nature and the strength of the family ties of the foreigner, the duration of residence in Belgium, and the existence of family ties or cultural/social connections with the country of origin.

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CANADA

This article discusses obtaining permanent residence in Canada through the Express Entry system.

Introduced on January 1, 2015, Express Entry is an online application system used by Immigration, Refugees and Citizenship Canada (IRCC) to manage, assess, and approve Canadian permanent residence applications under the Federal Skilled Worker program, the Federal Skilled Trades program, and the Canadian Experience Class program. In addition to these economic immigration programs, Express Entry is currently being used by certain Canadian provinces as a gateway to apply for their Provincial Nominee programs. Express Entry applications are intended for foreign nationals wishing to settle in a Canadian province other than Québec (because Québec operates its own distinct permanent immigration program). While the core requirements of each program remain unchanged, Express Entry brings to the Canadian immigration world a new system designed to improve processing times and to give immigration officers the means to select from a large pool of candidates the top applicants for Canadian permanent residence.

The Express Entry system operates under a two-step process. First, a candidate wishing to apply for Canadian permanent residence must submit his or her application "profile" in the Express Entry pool of candidates, where the application is evaluated against other candidates in the pool. The Express Entry system assesses a candidate's desirability by ranking all applications received according to Comprehensive Ranking System (CRS) points, and provides each candidate with an overall CRS points score. Under the Express Entry system, CRS points are awarded to candidates based on the value of their education, their English and French language skills, their Canadian work experience, and their Canadian offer of employment, if applicable. Moreover, points are given to candidates based on a broader skills transferability category, which awards

points based on a combination of English and French language proficiency, education credentials, and Canadian and foreign work experience.

Following the assessment of each candidate's qualifications in the Express Entry system, candidates with the highest number of CRS points receive an "Invitation to Apply" for Canadian permanent residence. This "Invitation to Apply" is a mandatory step in the process, without which it is impossible to apply for Canadian permanent residence under the economic immigration programs listed above. Once the "Invitation to Apply" is received, a candidate has 90 days to submit a Canadian permanent residence application along with all supporting documents.

Pursuant to the "Ministerial Instructions Amending the Ministerial Instructions Respecting the Express Entry System," effective November 19, 2016, significant changes were introduced to the way points are awarded in the Express Entry system. Until recently, candidates who held a Labour Market Impact Assessment (LMIA)—a favorable opinion issued by Service Canada confirming a temporary job offer in Canada—were awarded 600 CRS points, virtually guaranteeing an "Invitation to Apply." With the newly announced changes of November 19, 2016, candidates with a valid LMIA are no longer awarded these 600 CRS points and must now be satisfied with only 50 CRS points. While this is a major disadvantage to candidates who before November 19, 2016, depended on their LMIAs to secure an "Invitation to Apply," other skilled candidates who hold valid work permits under LMIA-exempt categories (such as Intra-Company Transferees or NAFTA Professionals) will now be awarded 50 CRS points or 200 CRS points, depending on their occupation (200 CRS points are awarded for an offer of employment in an occupation contained in Major Group 00 (senior management occupations) of the National Occupation Classification (NOC)). It is expected that these candidates will become more competitive in the Express Entry pool of candidates and will decrease the overall CRS score a candidate must reach to receive the sought-after "Invitation to Apply." As an example, with the January 4, 2017 "draw," the candidate with the lowest score to receive an "Invitation to Apply" had a total of 468 CRS points. The November 2016 changes also provide new points for Canadian study credentials.

Once a candidate receives the "Invitation to Apply" for Canadian permanent residence and submits a complete application to IRCC, he or she may become eligible to file an application for a Bridging Open Work Permit (BOWP). This work permit, valid for 12 months, allows a candidate to renew a current Work

Permit (if expiring within 4 months) while the Express Entry Application for permanent residence is being processed.

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FRANCE

France is implementing a law on the rights of foreigners in France.

The Law on the Rights of Foreigners in France of March 7, 2016, and the decrees and orders of October 28, 2016, established the legislative and regulatory framework for new procedures for professional immigration, specifying in particular the new procedures and the lists of documents to be provided. The circulars of November 2, 2016, provide details on the priorities to guide the administration in the application of this law. The following are highlights:

Exemption from work permits for stays of less than or equal to three months for third-country nationals who are engaged in paid employment (Ministry of the Interior Circular of November 2, 2016), Decree No. 2016-1461 of October 28, 2016:
https://www.legifrance.gouv.fr/eli/decret/2016/10/28/INTV1609940D/jo

The law of March 7, 2016, provides for the abolition of work permits for foreign employees who come to France to work for three months or less in areas determined by decree. The list of these fields of activities was fixed by decree of October 28, 2016, and codified in article D5221-2-1 of the Labor Code. The circular of November 2, 2016, specifies that the exemption relates only to work authorization, not to any other social or tax obligations. The exemption applies to an alien who is a national of a third country, who is in principle subject to a work permit, and who comes to France to work as an employed person in the categories listed in the decree, for a period that cannot exceed three months .

Scope of exemption. The scope of exemption is specified for each activity; i.e., those that are work permit-exempt. The burden is on the employer to verify whether or not the wage-earning activity to be exercised is exempted from a work permit of less than three months.

If the employer's field of activity or employment is subject to exemption, the work permit application does not need to be filed with the DIRECCTE (*directions régionales des entreprises, de la concurrence, de la consommation, du travail et de*

l'emploi). Employees who require a Schengen visa must add evidence regarding the work permit exemption to the visa application. In all cases, whether employees are Schengen visa-exempt or not, the employer must provide the employee with the documents justifying the exemption. These documents are listed for each type of activity (e.g., for audit and expertise activities, in particular any document attesting that the activity is an audit and verification assignment, as well as the letter of assignment or the addendum to the employment contract specifying the nature, reason, duration of the assignment, and conditions of employment and remuneration).

Measures for the reception, stay, and work of foreigners for stays of more than 90 days

The new law and its implementing decrees are intended to facilitate the stay of foreigners in France and provide for related administrative procedures, particularly with regard to work in France. This relaxation of procedures is accompanied by new verification procedures, in particular during the period of validity of the multi-annual cards.

New cases of exemption from medical examinations. As of November 1, 2016, foreign nationals in several categories no longer must submit medical certificates issued by L'Office Français de l'Immigration et de l'Intégration (OFII) in support of their applications for a residence permit, including:

- Applicants for the "Talent Passport" and "Family Passport" passes ("Passport" in this context refers to the new French immigration category and is not a passport in the usual sense of the word)
- Applicants for the "intra-company transferee (ICT) detached employee" residence permit
- Applicants for the internship card and trainee ICT
- Students as of January 1, 2017

Provisional stay permits (*autorisation provisoire de séjour*, or APS) for the purpose of exercising a first job or pursuing a professional activity. The provisional authorization of stay for foreign students is expanded and relaxed in the following ways:

- Opening to more degrees: Initially intended for students who have at least a master's degree, it is now also open to students holding a level I diploma certified by the *Conférence des Grandes Écoles* or a diploma of professional

license.
- The APS scheme is open to students showing a business start-up project in a field corresponding to their training. At the end of the validity of the APS, the student will be able to obtain a residence card, "entrepreneur/professional liberal," or "Talent Passport," labeled "entrepreneur," if he or she fulfills the conditions of issuance.
- The student holding an APS can obtain an "employee" or "temporary worker" residence card, but also a "Talent Passport" labeled "skilled employee/innovative company, CBE, researcher or performer."

The conditions to benefit from non-opposability of employment must be maintained: employment or professional activity in connection with the training taken, with a threshold of remuneration of 1.5 times the guaranteed minimum wage (*salaire minimum de croissance*, or SMIC) (which can, however, be adjustable depending on the professional field).

Temporary residence permits (CST)

The temporary residence permit (*carte de séjour temporaire*, or CST) is distinguished from the multi-annual residence permit and the multi-year "Talent Passport" residence permit. CSTs have a maximum validity of one year, except for the "temporary worker" CST when renewed.

ICT trainee, ICT family trainee, ICT mobile trainee, and ICT family mobile trainee (article L313-7-2 of CESEDA)

- A VLS-TS "ICT trainee" may be granted to an employee who is not a citizen of the European Union (EU), who is undertaking an internship within the framework of an internship agreement. The VLS-TS is issued for a duration corresponding to that of the internship within the limit of one year. The status of "ICT trainee" allows mobility of up to 90 days in another member state of the EU. The "ICT family trainee" residence card is issued to the spouse. This card gives right to the exercise of a professional activity.
- The "ICT mobile trainee" residence permit is issued to a foreign employee holding an "ICT trainee" card obtained in another EU Member State. It allows mobility of more than 90 days in intra-group context. The spouse of the "ICT mobile trainee" receives a "mobile ICT trainee family" card entitling him or her to the exercise of a professional activity.

Temporary residence permit "employee" and "temporary worker" (article L313-10 CESEDA)

- The "employee" residence permit may be issued to a foreigner who has a contract of indefinite duration.
- The "temporary worker" residence permit may be issued to a foreign national who has a fixed-term contract or is subject to the posting under Articles L1262-1 and L1262-2 of the Labor Code (own account, intra-group, in the framework of a service provision or within the framework of the interim).
- Employees on intra-group mobility who cannot benefit from either a "Talent Passport" or an "ICT detached" residence permit may be issued a "temporary worker" residence permit.
- The CST cannot be renewed for a period exceeding one year, except for the CST "temporary worker," which can be renewed for the duration of the fixed-term contract or for the extension of the secondment.
- Students with a master's degree, a level I diploma certified by the C*onference de grandes écoles* or a diploma of professional degree, have access to the CST "temporary worker" or "employee" in the framework of change of status, without being subject to a labor market test, provided the job offered is consistent with the studies followed and the proposed remuneration is at least 1.5 times the SMIC.

Temporary residence permit "entrepreneur/professional" (article L313-10 CESEDA)

This permit merges the previous "merchant" and "professional" titles and may be issued to foreigners who wish to pursue a self-employed, commercial, craft, industrial, or professional activity.

Multi-year residence card (articles L313-17 to L313-24 CESEDA)

The new multi-year residence card system is effective as of November 1, 2016. Distinctions are made between the general multi-year residence permit, the multi-year residence card "Talent Passport" and "Family Passport," the multi-year residence permit.

Multi-year residence cards can only be issued on first request (new arrivals) upon presentation of a long-stay visa.

General multi-year residence card. The four-year general multi-year residence permit may be issued upon the expiration of an initial residence permit of one

year, provided the following conditions are met:

- Continued compliance with the initial conditions for issuance of the one-year residence permit
- Attendance of the training prescribed under the Republican Integration Contract (CIR)
- Absence of rejection of the essential values of the Republic

Holders of a long-stay "Visitor," "Trainee," or "Temporary Worker" visa do not have access to the multi-year residence card.

The general multi-annual residence permit has a fixed duration:

- Four years for holders of "Salaried" CSTs on permanent contracts or holders of "Contractor/Professional" CSTs
- Two years for holders of residence permits as spouses of French people or parents of French children who have full access to the resident card after three years

The multi-year residence permit issued to foreign students has a duration adapted to the course of study followed. At the end of an initial one-year student residence permit, a multi-year residence permit may be issued, the duration of which would correspond to the length of the course of study followed.

Multi-year residence card "Talent Passport" (article L313-20 CESEDA)

The multi-year residence card "Talent Passport" brings together under a single residence permit 10 categories of professional activities for which a stay and work in France ought to be facilitated. Its duration is four years, in principle, and it can be issued from the initial admission to stay.

When issued for the exercise of an activity as an employed person, prior authorization to work is not required.

Family members can receive a "Family Passport" residence permit, the duration of which will be equal to that of the principal and with a right to work.

Initial application: If the foreign national resides outside of France, the decision to issue the title is made by the diplomatic and consular authority and the residence permit is issued by the prefect of the residence of the foreign national on presentation of his or her passport bearing a long-stay "Talent

Passport" visa. When the envisaged duration of stay is 12 months or less, a joint long-stay visa and permit to stay (VLS-TS) is issued for the duration of the envisaged stay. When the duration of stay exceeds 12 months, a long-stay visa and, upon arrival in France, a residence permit are issued, according to the contract or the nature of the project.

Where the foreign national is already admitted to residence in French territory, the decision to issue the permit is made by the prefect of his or her place of residence.

Renewal: Renewal must be requested within two months of the expiration of the VLS-TS or the residence permit. Renewal is subject to compliance with the initial conditions and certain additional conditions for the specific categories: business creator, innovative economic project holder, or economic investor.

"European Blue Card Passport" (article L313-20-2° CESEDA)

This is issued to foreign nationals who are in highly qualified employment for a period of one year or more and who have completed at least three years of higher education or have acquired an equivalent qualification through at least five years of experience.

The wage provided for in the contract must be at least one and a half times the average annual reference wage. This amount is 53,836.50 euros annually as of November 1, 2016.

"Talent Passport Employee on Assignment" (article L313-20-3° CESEDA)

This is issued to an employee of a foreign affiliate being transferred to France. The conditions are as follows:

- An employment contract of more than three months with an employer established in France and a gross remuneration of at least equal to 1.8 times the SMIC.
- A seniority of at least three months with the group or the employer established outside France.

"Talent Passport Researcher" (article L313-20-4° CESEDA)

This title is awarded to a foreign national holding a degree equivalent to a master's degree that requires research work or provides university-level education, under a hosting agreement signed with a public or private

organization having a previously approved research or higher education scheme.

"Talent Passport Performing Artist" (L313-20-9°)

For the above and this category (Talent Passport issued under 2°, 3°, 4°, and 9° of article L313-20 CESEDA), the duration of the residence permit corresponds to the duration of the employment contract.

"Talent Passport Young Graduate Employee" or "Employee of an Innovative Company" (article L313-20-1° CESEDA)

- Issued to an employee who has obtained a master's degree (or level I diploma certified by the *Conférence des Grandes Écoles*) holding a contract of employment of at least three months and a salary equal to at least twice the annual minimum wage
- Can also be issued under the same conditions of employment contract and salary when hired by an innovative company as defined in *Article 44 sexies 0 A* of the General Tax Code. The employee must participate in the research and development project of the company
- The duration of the card is identical to that of the employment contract

"Creator of Business Passport" (article L313-20-5° CESEDA)

This is issued to a foreign national under the following conditions:

- Diploma equivalent to a master's degree or any document showing at least five years' experience at a comparable level
- Proof of sufficient resources during his or her stay to provide for himself or herself and, where appropriate, those of his or her family members.
- Proof of an investment of at least €30,000 in the project
- Proof of compliance with the rules in force in the field of activity in question

"Talent Passport Innovative Economic Project" (article L313-20-6° CESEDA)

This is issued when a foreign national can:

- Justify an innovative economic project
- Show recognition of his or her project by a public body
- Prove sufficient resources during his or her stay to provide for himself or herself and his family members, irrespective of the benefits and

allowances mentioned in the third sentence of 2° of article L314-8

"Talent Passport Mandataire Social" (article L313-20-8° CESEDA)

This is issued when a foreign national can:

- Hold the position of legal representative in an entity or a company doing business in France
- Have seniority of at least three months as an employee or corporate officer in an entity or an affiliated company outside France
- Receive a remuneration of at least three times SMIC

The card is issued for a period corresponding to that of the functions performed within the limit of four years.

"Talent Passport Foreigner of International or National Fame" (article L313-20-10° CESEDA)

This is issued when a foreign national can:

- Show established national or international fame
- Exercise in France an activity in a scientific, literary, artistic, intellectual, educational, or sports field for more than 3 months
- Show sufficient means of existence

The duration of the title is determined by the nature, characteristics, and duration of the project in France, up to a maximum of 4 years

"Talent Passport Economic Investor" (article L313-20-7° CESEDA)

This is issued when a foreign national can:

- Show a project of direct economic investment in France
- The applicant must personally or through a company which he or she manages or of which he or she holds at least 30% of the capital, invest or undertake to invest 300,000 euros (tangible or intangible asset) and create or safeguard employment or, failing that, to commit to creating or safeguarding employment within the 4 years following the investment in France

This direct economic investment of 300,000 euros minimum is realized by:

- An investment in social capital

- Reinvested earnings
- Loans between affiliates

Indirect (passive) investment, also referred to as financial investment or portfolio, does not fall within the scope of this residence permit.

Multi-annual "ICT Secondee" residence permit (article L313-24 I and II CESEDA)

The multi-annual residence permit referred to as an "ICT Secondee" may be issued to a foreign employee who is a third-country national seconded by his employer to an affiliate company in France and for the purpose of holding a senior management position or to provide expertise without a contract of employment with the host entity in France.

This involves the intra-group secondment (article L1262-1-2° of the Labor Code) in the framework of an assignment of senior management or contribution of expertise.

The conditions required to benefit from the ICT secondment include:

- At least three months of continuous seniority in the group
- Intra-group secondment
- Secondment for a senior management position or contribution of expertise
- Assignment of up to three years

There is no minimum pay threshold. The conditions of remuneration must be commensurate with the nature of the employment. The foreign national must show sufficient resources to meet his or her own needs and, where appropriate, those of his or her family members.

When the envisaged duration of stay is less than or equal to 12 months, the foreign employee receives a VLS-TS labelled "ICT Secondee." When the envisaged duration of mission is more than 12 months, the foreign employee receives a long-stay visa labeled "ICT Secondee" and, upon his or her arrival in France, a residence permit.

The "ICT Secondee" residence permit allows intra-group assignments to be carried out in other EU Member States.

Family members (spouses and minor children entering France) can receive the residence permit "ICT Seconde Family," which authorizes the stay and work in

France. The duration of the card is aligned with that of the employee.

"ICT Mobile Secondee" card (article L313-24-III and IV CESEDA)

This residence permit is issued to a foreign employee holding an ICT residence permit issued by another EU Member State who is assigned to France for more than 90 days as an intra-group transfer. The conditions for benefiting from this status include:

- Intra-group secondment
- Having already been admitted to another EU country as a seconded ICT employee
- Employment conditions specific to the ICT secondment and the legal remuneration thresholds
- Showing sufficient resources

Procedures for the control and withdrawal of residence permits

The authorities can conduct post-clearance verifications, and the Prefects have an expanded right to certain kinds of information.

Obligation to provide information (article L313-5-1 CESEDA)

The beneficiary of a residence permit must inform the administration of any change in his or her situation. This results in three cases of potential refusal:

- The foreign national ceases to fulfill the conditions for the residence permit.
- The foreign national does not cooperate in the verification process.
- The foreign national does not respond to the convocations.

The administration's right to information (article L611-12 CESEDA)

This right can be exercised during initial application, during the period of validity in a random or targeted way, and during renewal.

- The Prefect may solicit other administrations or public or private bodies (e.g., an administration, social security, higher education institution, energy provider, financial institution, or register of commercial courts) to verify the accuracy of the information provided by the applicant for the residence permit.
- The Prefect may verify the authenticity of the documents and have information or documents sent to it within the framework of a residence

permit application.
- Confidentiality may not be a ground to refuse requests for information from the Prefect.
- The Prefect's verification may not be a systematic annual check. Rather, it could be random and targeted. Two verification phases can be distinguished:

  - During the first year of application for multi-annual residence permits (November 1, 2016, to November 1, 2017), a random and targeted monitoring phase will make it possible to draw the first conclusions from the implementation of the new procedures.

  - A second phase will begin on November 1, 2017, on the basis of the results obtained during the first control phase.

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Several developments have been announced.

Posted Workers Secondment Notification Submission Deadline Approaching

The new obligations set forth by Decree n. 136/2016 implementing the EU Posted Workers Directive (2014/67) apply to:

- Any assignments activated on or after July 22, 2016, that are ongoing as of January 26, 2017. For these, the secondment notification must be filed by January 26, 2017.
- Any assignments activated after December 26, 2016.

Who is affected?

- Employers established outside Italy (EU or non-EU) sending their employees (EU and non-EU) to work in Italy on a temporary basis.

Action required:

- Employers established outside Italy must check whether any assignment to Italy has been activated on or after July 22, 2016, and is ongoing as of January 26, 2017.
- For any assignments to Italy activated on or after July 22, 2016, and ongoing as of January 26, 2017, employers must file the secondment

notification **by January 26, 2017,** and comply with the other obligations set forth by the law.
- For any assignments to Italy, employers must now file the secondment notification by midnight of the day preceding the assignment start date and comply with the legal obligations.

The dedicated website, Posting of Workers (http://www.distaccoue.lavoro.gov.it/) (available in English and Italian) provides an overview of the current regulation and clarifies the operational aspects.

Implementation of Directive 2014/66 on Intra-EU Mobility

With the publication of Legislative Decree n. 253/2916 , effective January 11, 2017, Italy has finally implemented Directive 2014/66/EC of May 15, 2014 (ICT Directive) on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer. The decree amended the Consolidated Act on Immigration (L. Decree 286/1998, introducing two new articles (*27-quinques and 27-sexies*) of the immigration law.

The following are highlights of the ICT Directive.

Who is affected?

The new provisions apply to third-country nationals temporarily seconded from a non-European Union (EU) employer to an Italian company of the same group and who qualify as:

- Managers (*dirigenti*—workers in a senior position, directing the host entity, supervising the work of other professional or managerial employees);
- Specialists (workers possessing specialized knowledge essential to the host entity's areas of activity, techniques, or management); or
- Trainees (graduated workers transferred for career development purposes).

Workers who already hold an ICT permit issued by another EU Member State can work in Italy up to 90 days by notifying the local Police Station (*Dichiarazione di presenza*) of their stay. If a worker wants to stay for more than 90 days, he or she must apply for and obtain an ICT Work Permit but is exempt from obtaining a work visa. He or she, however, must register for and obtain an ICT permit of stay.

What are the main features of the new ICT permit?

- It allows both residence and work in Italy.
- It may be issued for a maximum of three years for managers and specialists and up to one year for trainees.
- Upon expiration of the maximum ICT permit validity period, a new application can be filed only after at least three months have passed.
- The work permit application is filed by the Italian host company.
- Family members of ICT permit holders qualify for a family permit even if the assignment is for less than one year.
- Holders of a valid Italian ICT permit may, under certain conditions, temporarily perform activities at an entity of the same group established in another EU Member State.

What are the main requirements to qualify for the new ICT permit?

- The host entity established in Italy and the employer established outside the EU must be part of either the same company or group of companies.
- The employee must have been working for the same company or for a company of the same group for at least three uninterrupted months immediately preceding the transfer.
- After the transfer, the worker must return to the company, part of the same company or a company of the same group outside the EU.
- The worker will cover a position as manager, specialist, or trainee for which he or she has the required qualifications, professional experience, or educational degree (if the position is for a regulated profession, this must be recognized in Italy).
- A commitment to comply with the relevant social security obligations in Italy must be confirmed, unless a social security agreement applies.

The Italian immigration authority is still developing application procedures. It is uncertain how the new application procedures will work in practice.

The existing highly skilled migrant program remains in place with some variations. Therefore, it is still possible to file applications under *article 27 letter (a)* regulating the intra-company work permit for managers and highly skilled staff. The new provisions overlap with those of the existing highly skilled migrant program. The immigration authority is expected to issue guidelines soon to clarify the differences between the two procedures.

Unlike the standard intra-company permit, the new ICT permit allows non-EU

workers to work in other EU countries for companies of the same group without needing to obtain new visas.

The Decree does not apply to researchers, students, autonomous workers, or workers posted under Directives 1996/71 and 2014/67.

What are the steps for obtaining an ICT Work Permit?

1. The host company files the application at the Immigration Office (*Sportello Unico*). The company must submit supporting documents within 10 days.
2. The Immigration Office, if all conditions are met, issues the permit within 45 days.
3. The ICT Worker applies for the visa at the Italian consulate of his or her place of residence.
4. Within 8 days of entry into Italy, the worker submits the application for ICT permit of stay (*permesso di soggiorno*) at the Immigration Office.
5. The Police (*Questura*) issue the ICT permit of stay within 45 days of application.

ICT Workers can bring family members for the period of their assignments in Italy.

The immigration law already provided for an intra-company work permit, regulated by article 27(a). Below is a comparative table showing the differences between the two permits.

	New ICT Work Permit ***Art. 27 Quinques***	**Managers/Highly Skilled Workers** ***Art.27(A) Permit***
Filing Entity	Host company established in Italy	Host company established in Italy
Seniority	3 months	6 months
Maximum Validity	3 years	5 years
Cooling of Period	3 months	No
Contract of Stay	No	Yes
Validity in Other EU States	Yes	No

Obligation to Register & Apply for Residence Permit	Yes	Yes
Family Allowed	Yes, regardless of duration of the assignment	Yes, but only for assignments of 1 year or more
Local Hire	Not possible	Possible at the host company at the end of the first assignment period or within the maximum assignment length – 5 years

2017 Immigrant Quota Decree Expected Soon

The Italian government is working on the annual decree (*decreto-flussi*) that will determine the number of work authorizations (quotas) that will be available in 2017 for different categories of foreign citizens wishing to work in Italy.

As background, immigration for work purposes in Italy is based on a quota system that is fixed annually by means of the *decreto-flussi*. This quota decree sets the numerical limits for each category of worker/citizen allowed to apply for a work permit. Quotas do not apply to certain categories of workers.

As of now, the number of "quotas" for 2017 is thought to be no more than 30,000. At least half of these will be reserved for foreigners seeking entry for the purpose of seasonal work. Several quotas will be reserved for foreign citizens who already have residence permits in Italy (e.g., for study or seasonal work) and are intending to convert them into permits that would allow them to be employed in Italy full-time.

The remaining numbers will be for self-employment and special categories of foreigners (such as South American citizens with Italian ancestors or workers who have completed a specific training in their countries of residence).

The 2017 quota decree is not expected to be surprising or much different from the quota decrees issued since 2011. In fact, the last quotas for subordinate employment were issued in 2010, and since then no further quotas for foreign citizens residing abroad seeking entry for subordinate employment in Italy have been issued.

New Provisions on Foreign Seasonal Workers

New provisions on foreign seasonal workers entered into force on November 24, 2016, under Legislative Decree n. 203 of October 29, 2016, which has transposed Directive 2014/36/EU on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers. Further guidelines and clarifications were provided with circular letter no. 37 issued on December 16, 2016, by the Ministry of Labor and the immigration authority.

Together with the set of common rules on intra-corporate transferees, researchers, students, highly qualified workers, family reunification, and long-term residents, the EU Seasonal Workers Directive is part of EU common policy that aims to establish a framework for legal migration and to simplify and harmonize procedures within the EU.

The Directive is aimed at cutting the number of people working without authorization in seasonal jobs and overstaying, preventing exploitation, protecting the health and safety of seasonal workers, and facilitating the movement of these workers from and back to their home countries by facilitating the re-entry procedures for subsequent seasons.

The decree introduces several changes to the current regulation, easing the application procedures but at the same time imposing more severe penalties for employer noncompliance.

The most important new features in the modification of the current Italian regulation on seasonal workers include:

- Work sectors defined as “seasonal” are those of agriculture and tourism only.
- Procedures for multi-year work permit applications are easier:
    - The worker must demonstrate employment in seasonal work in Italy at least once in the previous five years (instead of two years).
    - The multi-year residence permit for seasonal work has a maximum three-year duration. For each year, the allowed stay is indicated, up to a maximum of nine months in a 12-month period.
    - The employer can apply for a multi-year work permit that entitles the worker to obtain subsequent entry visas more easily.
    - Each year of work authorization is valid for the time indicated in the job contract offered (not on the basis of previous work permits) and can be filed also by another employer (different from the one who

first applied).

- Labor market tests are no longer required, and the processing times are clarified (20 days for the issuance of a seasonal work permit).
- Stricter requirements and rules on adequate accommodations are to be guaranteed by the employer.
- A seasonal worker can accept another job offer in the seasonal sector if his or her contract for the year has expired but he or she has not yet used up the allowed nine months in a 12-month period (with no need to re-apply for a visa).
- If the worker is offered a job (non-seasonal) and has already worked in Italy for at least three months, he or she may apply for conversion into a standard residence permit for work (within the quota limits).
- Penalties for noncompliance with immigration regulations are as provided for under Italian immigration law, article 22, governing the general provisions on work permits for foreign nationals.
- If the permit is revoked because of the employer's noncompliance with labor and migration rules, the worker must receive compensation based on the salary set in the collective bargaining agreement.

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SPAIN

This article discusses the non-lucrative residence permit, which allows third-country nationals (foreign nationals not covered by the European Union legal framework) to live in Spain without performing labor activities.

The Spanish immigration legal framework regulates the non-lucrative residence permit allowing third-country nationals (foreign nationals not covered by the European Union legal framework) to live in Spain without performing labor activities.

Foreign nationals wishing to obtain this type of permit must meet four main requirements:

- To be financially reliable, evidencing a regular monthly income of at least 2,130 euros for the principal and 532.51 euros for each dependent, if applicable.
- Not to have a criminal background in the country/countries of residence

during the last 5 years.
- To hold private or public medical insurance coverage for Spain (including for hypothetical repatriation).
- Not to have any of the illnesses/diseases listed in the international Sanitary Regulation of 2005 as serious conditions for public health.

In addition to these requirements, the applicant should not be in unlawful status in Spanish territory during the process and should not have signed a non-return agreement to Spain.

If the foreign national has fulfilled the above conditions, he or she may apply for the non-lucrative visa and residence permit at the Spanish consulate having jurisdiction over the applicant's place of legal residence. The applications are currently being resolved in approximately 15 days (the statutory processing time is 3 months) and the applicant has one month to collect the visa from the notification of approval.

Once the foreign national is in Spain with a valid visa, he or she must apply for and collect a residence card, initially valid for one year. This type of permit can be extended for two consecutive periods of two years each provided the conditions that led to the initial approval are maintained. After five years of legal residence, the non-lucrative residence permit holder may apply for a long-term residence permit, provided the legal requirements are fulfilled.

Also, after one year of living in Spain with a non-lucrative permit, the visa-holder can apply for a residence permit allowing work, and the Labor Market Test will not be applicable.

Stays outside of Spain for more than 180 days in a year, either continuous or discontinuous, are grounds of cancellation of this permit.

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TURKEY

There has been an important change in citizenship rules.

With very little public discussion or notice, on January 12, 2017, amendments to Turkey's citizenship regulations were published, creating a new category for acquisition of citizenship. The amended regulations relate to acquisition of citizenship based on a Council of Ministers decision (Law No. 5901, article 12). The amendment to article 20 of the regulations relates to a new category,

based on that law's subsection, which now allows certain foreign investors to be eligible to apply for Turkish citizenship.

The regulations do not specify procedures, but presumably this will still be handled by the same agency within the Interior Ministry in conjunction with the agencies referred to below for qualification evidence. The investor categories below qualify for citizenship applications (in lieu of the residence requirement or marriage to a Turkish national), but all other restrictions, such as for health and public security reasons, appear to remain.

The regulations now allow the following categories of investors to be eligible to pursue Turkish citizenship:

1. The applicant has invested US $2 million as a free capital investment (as proven to the Ministry of Economy);
2. The applicant has invested US $1 million in real estate in Turkey, bought with a deed restriction that blocks selling for three years (as proven to the Ministry of Environment and Urbanization;
3. The applicant has provided employment for 100 employees (as proven to the Ministry of Labor);
4. The applicant has invested US $3 million for three years with banks active in Turkey (as proven to the Committee on Banking Supervision); or
5. The applicant has invested in the Turkish government's debt instruments of US $3 million bought with a deed restriction that blocks selling for three years (as proven to the Under-Secretariat for the Treasury).

Given the current state of affairs in Turkey, the presumption is that the majority of applicants that take advantage of the new rules will be from conflict zone countries such as Syria or Iraq. Whether additional categories may be implemented specifically for Syrians is not yet publicly confirmed.

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UNITED KINGDOM

This article briefly notes hot topics for 2017.

There are a number of important immigration changes coming in 2017. Article 50 may or may not be triggered in March and with it the beginning of negotiations on the UK's future relationship with the EU. Whatever the eventual outcome, immigration will feature prominently; Home Secretary Amber Rudd

has already indicated her desire to introduce further restrictions for non-EU nationals at the Tory party conference, and a consultation is anticipated in the new year. The Immigration Skills Charge is expected to be introduced starting in April 2017 for all sponsors of Tier 2 migrants.

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