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US IMMIGRATION & NATIONALITY LAW

APRIL 2017 GLOBAL IMMIGRATION UPDATE

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Headlines:

INDIA – India has launched an e-Tourist Visa for certain travelers.

ITALY – Various developments have been announced.

NETHERLANDS – This article offers comments from a Dutch perspective on the new European Union Directive on intracorporate transferees.

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UNITED KINGDOM – This article discusses several recent developments, including how triggering Article 50 will affect employers of EU nationals in the UK.

Details:

INDIA

India has launched an e-Tourist Visa for certain travelers.

India has launched an e-Tourist Visa (eTV) for travelers whose sole objective for visiting India is recreation, sightseeing, a casual visit to meet friends or relatives, a visit for 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 the visa is non-extendable and non-convertible.

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

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

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 who are of Pakistani origin must apply for a regular visa at an Indian Mission.

The e-TV is available for nationals of the 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 Islands, Chile, China, China-SAR Hong Kong, 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 Kitts 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 Islands, Tuvalu, United Arab Emirates, Ukraine, United Kingdom, Uruguay, United States of America, Vanuatu, Vatican City-Holy See, Venezuela, Vietnam, Zambia, and Zimbabwe.

For further details, see https://indianvisaonline.gov.in/visa/tvoa.html.

ITALY

Various developments have been announced.

Italy Welcomes High-Net-Worth Individuals

This year the Italian Budget Law, effective January 1, 2017, includes several measures aimed at attracting foreign investments and encouraging high-net-worth (HNW) individuals to move to Italy. Among these are the introduction of a preferential tax regime for wealthy individuals who take up tax residency in Italy and a new visa program specific for HNW investors that facilitates the procedures for their entry and residence in Italy. Until now, Italy, unlike other EU countries, did not provide a dedicated entry-for-investment visa scheme.

Favorable Flat-Tax Regime Begins for New Residents

On March 8, 2017, the Italian Revenue Agency (*Agenzia delle Entrate*) issued implementing provisions for a flat-tax regime. The law is now fully effective.

Individuals who become Italian tax residents can take advantage of a substitute tax regime on their foreign income. Under this regime, regardless of amount, foreign income will only be subject to a yearly flat tax of €100,000. Close family members can also benefit from the favorable tax measures: a flat tax of just €25,000, instead of €100,000, will be applied to their foreign income. Moreover, opting for the new regime guarantees full exemption from reporting requirements with respect to financial and non-financial assets abroad and from succession duties on assets outside Italy.

To qualify for this option, the applicant must not have been resident in Italy for at least 9 tax years during the previous 10 years; eligible taxpayers can request the substitute tax regime when filing their tax returns. Before that point, it is possible to submit a preliminary ruling (*interpello*) to the Italian Revenue Agency.

Guidelines and checklists of requirements are now available. For further information, see http://www1.agenziaentrate.gov.it/english/invest_italy/new_residents_regime.htm.

New Provisions Introduced for Dedicated Visa Option: Investor Visa

Additional provisions have been introduced in Italian immigration law to promote foreign investments. An "investor visa" will shortly be available to foreigners intending to invest in Italy under one of the following options:

- €2 million in government bonds, to be kept for at least 2 years
- €1 million in the share capital of an Italian company, reduced to €500,000

if the company is an innovative start-up
- €1 million in philanthropic donations (culture, education, immigration management, scientific research, or cultural heritage)

The government is drafting an implementing decree that, once published, will make the law fully effective.

Cap on Workers From Outside the EEA for 2017 Announced

The Italian government has announced a cap of **30,850** on the number of workers from outside the European Economic Area (EEA) allowed in Italy for 2017.

The figure and the categories of workers allowed this year are not very different from those announced in recent years. Once again, no quotas for standard sponsored employment have been issued (apart from a few exceptions below).

More than half of the quotas are reserved for seasonal workers (17,000). Most of the remaining quotas (10,850) are reserved for changes of status for residence permit holders in Italy or the European Union (EU) (study, seasonal work, permanent); for example, to convert the existing residence permit into a permit for employment/self-employment.

The remaining few quotas are for self-employment work (2,400) and special categories (600) of foreigners (such as South American citizens with Italian ancestors or individuals who have completed a specific training in their country of residence).

Background. Immigration for work purposes in Italy is based on a quota system. Quotas are set annually by means of a decree (*decreto-flussi*). The decree sets the numerical limits for each category of foreign nationals who may apply for work permits and the period during which applications can be submitted. Permits are normally granted on a first-come, first-served basis.

Several categories of workers are excluded from the cap and are not subject to a fixed limit, such as intra-company transfer (ICT) workers, highly skilled workers, executives or managerial employees assigned to the Italian branch of a foreign legal entity, university lecturers and professors, translators and interpreters, and professional nurses.

Deadlines and How To Apply

Application forms for permit conversion and permits reserved for special

categories of foreigners, and seasonal work permit application forms, are available at https://nullaostalavoro.dlci.interno.it/Ministero/Index2. Application forms can only be submitted until December 31, 2017.

Instructions and deadlines are set by quota decree 2017 (DPCM 13 February 2017) and Ministries joint circular 08.03.2017, at http://www.lavoro.gov.it/notizie/Documents/Circolare_flussi_2017.pdf.

Quota Categories

The 30,850 quotas are allocated among the following categories:

NEW ENTRIES—NON-EU NATIONALS RESIDING ABROAD

- 17,000 quotas (seasonal work). Limited to:
    - Agriculture; hospitality and tourism industry
    - Nationals of Albania, Algeria, Bosnia-Herzegovina, South Korea, Ivory Coast, Egypt, Ethiopia, Yugoslav Republic of Macedonia, Philippines, Gambia, Ghana, Japan, India, Kosovo, Mauritius, Moldova, Montenegro, Morocco, Niger, Nigeria, Pakistan, Senegal, Serbia, Sri Lanka, Sudan, Ukraine, Tunisia
    - 2,000 entries reserved for workers who have already worked as seasonal employees at least once in the previous 5 years and whose employers apply for a multi-year permit. For these, no nationality restrictions apply
- 500 quotas (work as an employee). For foreign nationals residing abroad who have completed an educational/training program in their home countries (pursuant to Article 23, Immigration Law)
- 100 quotas (employee/self-employee). For employed or self-employed work. For foreign nationals who have Italian ancestry and reside in Argentina, Uruguay, Venezuela, or Brazil.
- 2,400 quotas for self-employment, which includes:
    - Entrepreneurs intending to implement an investment plan of interest to the Italian economy, involving an investment of at least €500.000 and creating at least 3 new jobs in Italy
    - Freelancers/independent contractors who intend to practice regulated or controlled professions (i.e., individuals belonging to a professional association or enrolled in an official/public register); or

professions that are not non-regulated but are considered representative at the national level and included in the lists edited by the Public Administration
    - Holders of corporate offices or administrative/controlling positions (any of the following: chairman, CEO, member of board of directors, auditor) in an Italian company, active for at least 3 years (requirements set by Visa Decree May 11, 2011 n.850)
    - Foreign citizens who intend to set up innovative start-up companies under certain conditions, who will have a self-employment relationship with the start-up
    - Internationally well-known artists of the highest reputation, artists of recognized high professional qualifications, or artists who are hired by well-known Italian theaters, important public institutions, public television or well-known national private television (requirements set by Visa Decree May 11, 2011 n.850)

PERMIT CONVERSION—FOR NON-EU NATIONALS ALREADY IN ITALY/EU

- 5750 quotas from seasonal to standard work permits. For conversions of seasonal work permit to standard, non-seasonal work permit (as an employee)
- 4000 quotas from study to employed work. For conversion of study, internship, and/or vocational training residence permit to residence permit for work (as an employee)
- 500 quotas from study to self-employment. For conversion of study, internship, and/or vocational training residence permit to residence permit for self-employment
- 500 quotas for holders of an EU residence permit for long-term residents issued by an EU Member State other than Italy who wish to apply for a residence permit for work (as an employee) in Italy
- 100 quotas for holders of an EU residence permit for long-term residents issued by an EU Member State other than Italy who wish to apply for a residence permit for self-employment in Italy

Employers should evaluate their need for work permits for non-EU nationals, especially if intending to hire foreign nationals holding a study, internship, and/or vocational training residence permit or permanent residents of an EU country.

Official Guidelines Issued for ICT Work Permits: What's New?

After the introduction of the new EU ICT work permit category in Italy in January 2017, based on the so-called "ICT Directive" (Directive 2014/66), the Ministry Of Labour and Social Policies has issued its official guidelines on the matter and list of documents (Circular letter 09.02.2017). Below is an overview of the main features and substantial changes to existing provisions:

- The previous work permit category under article 27 c.1 letter (g) of Italian immigration law no longer exists. Holders of work permits for highly skilled workers on assignment for a determined period to carry out a specific task or activity may have difficulties in extending the current permit to the end of the maximum assignment duration of 4 years.
- The existing intra-company work permit for managers/highly skilled staff pursuant to article 27 c.1 letter (a) remains in place.
- Substantial changes have been introduced for graduated workers transferred for career development purposes.
- ICT applications can be filed only for assignments longer than 90 days.
- Work and residence permits must be issued within 45 days from each application filing.
- Maximum duration of the transfer is 3 years for managers and specialists, 1 year for trainees (total, including extensions).
- Once the maximum period of transfer is reached, the worker must leave Italy and return to the sending employer or to a company of the same group. A new ICT application can be filed only after 3 months have passed.
- The application must be sponsored and filed by the host entity in Italy, defined as a seat, branch, or representative office of the non-EU employer. Companies must be affiliated; i.e., either directly owned by the non-EU sending company or by another company of the same group (per article 2359 of the Italian Civil Code).
- During the entire assignment, the employer must comply with the relevant social security obligations.
- There is more flexibility on the documents required to show an accommodation in Italy (in some locations, a housing feasibility certificate may no longer be required).
- Intra-EU mobility: 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. Similarly, the holder of a valid ICT permit issued by another EU member state does not need a visa to enter Italy and can be transferred for up to 90 days within 180 days in exemption of the work/residence permit. A work permit is required for longer assignments.

- Specific reasons for denial have been introduced. For example, a denial may be issued if the host company has been set up for the purpose of obtaining work permits or has been put into liquidation, has been liquidated, or is not carrying out any economic activity.
- The obligations set forth in article 10 of Decree n. 136/2016 implementing EU Posted Workers Directive (2014/67) do not apply (i.e., secondment notifications do not apply).
- Italian companies can request an expedited procedure by signing a *Protocollo di Intesa* (Protocol Agreement or Memorandum of Understanding) with the Ministry of Interior.
- Family dependents may join the assignee in Italy regardless of the duration of his or her permit and are allowed to work.

Posted Worker Notifications No Longer Required for ICT Workers

The Ministry of Labour has published a clarification on the applicability of secondment declaration obligations (http://www.cliclavoro.gov.it). The FAQ section explains that the provisions and obligations of Legislative Decree No. 136/2016 **do not** apply to the following categories of workers (see FAQ no. 10, https://www.cliclavoro.gov.it/Aziende/FAQ/Pagine/Posting-of-workers.aspx):

1. Foreign ICT managers, specialists, trainees, per Directive 2014/66/EU on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer (Ministry of the Interior and Ministry of Labour and Social Policies joint circular No. 9/2017, https://www.cliclavoro.gov.it/Normative/circolare-9-gennaio-2017-n.1.pdf)
2. Foreign researchers
3. Self-employed foreign workers
4. Intra-company assignees—managers, highly skilled—foreign workers referred to in Article 27 c.1 letter (a) of Italian Immigration Law

Points 2 to 4 have not yet been confirmed by means of a memorandum to be published by the Italian National Labour Inspectorate.

What is the change?

The obligations set forth in Decree n. 136/2016 implementing the EU Posted Workers Directive (2014/67) no longer apply to most foreign workers posted to Italy. The above-mentioned obligations are only applicable to:

- Service agreement assignments; i.e., workers posted to Italy to provide services in the framework of a service agreement between the Italian entity and the entity established outside the EU—Article 27 c.1 letter (i)
- So-called "Van der Elst assignment"; i.e., workers employed by an EU company posted to Italy to provide services in the framework of a service agreement between the Italian entity and the EU entity—Article 27 c.1-bis
- Workers of any nationality posted to Italy in the framework of the provision of services per the provisions set forth in the EU Posted Workers Directive (2014/67)

What's next?

Foreign companies posting workers under points 1 through 4 above are no longer subject to the secondment notifications and other related obligations (document storage, etc.). Secondment notifications already sent and that were not due may need to be cancelled/annulled. It is not yet clear how to proceed.

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NETHERLANDS

This article offers comments from a Dutch perspective on the new European Union Directive on intracorporate transferees.

The European Union (EU) has introduced an EU-wide permit scheme for intracompany transfers. Directive 2014/66, in force since November 29, 2016, offers excellent options for mobility of intracorporate transferees throughout EU territory—at least in theory. Another interesting feature: it's obligatory.

EU Directive 2014/66 of May 15, 2014, on the entry and residence of third-country nationals in the framework of an intra-corporate transfer (ICT Directive) was implemented in the Netherlands on November 29, 2016, the last day of the transition window. The ICT Directive is a landmark regulation in the sense that it introduces—compared to existing EU directives on labor migration—an exceptional level of harmonization across the EU. What does this directive mean, and how does it function?

Main Features of the ICT Directive Scheme

The ICT Directive applies to third-country nationals (i.e., non-EU/EEA nationals) who are temporarily transferred for occupational or training purposes to a Member State and who, at the time of the residence permit application, reside outside the territory of the Member States. It provides for a residence permit valid for a maximum of three years (for managers and technical specialists) or one year (for trainees). The main benefit of the permit is that it allows the transferee to travel from the EU Member State that has granted the permit to an establishment of the same group of undertakings in another Member State, without the need for a new test on fulfillment of the conditions. Thus, the ICT permit opens important new mobility options within the EU. Note that the United Kingdom, Ireland, and Denmark have opted out of the ICT Directive.

ICT Mobility

The ICT permit allows the transferee to move to other Member States for periods of time not exceeding 90 days (short-term mobility) and for periods longer than that (long-term mobility). For short-term mobility, the Member States have two options: they may simply allow the transferee to move and work in their territory on the basis of the valid ICT permit issued in the first Member State, or they might opt for a (rather complex) notification procedure. For long-term mobility, the Member States have three options. They may: (1) allow such longer stays on the basis of the ICT permit issued in the first Member State; (2) provide for a notification system; or (3) opt for an extra application procedure. Much will depend on which of these options the Member States will choose when implementing the Directive. Many still have not done so yet. In theory, the EU could effectively become a single area in which intracorporate transferees can move and work as if there were no Member States. The Netherlands has taken a conservative approach and chosen a notification system for short-term mobility and a permit system for long-term mobility. However, the applicant can work from the moment of application and with fewer conditions than for a first-entry application.

Concerns Raised by Corporations

The new rules were met with enthusiasm but also raised some concerns. Indeed, the residence permit obtained on the basis of the ICT Directive has certain limitations vis-à-vis existing permit schemes, both national schemes and EU schemes (such as the EU Blue Card scheme), or, at any rate, from a Dutch

perspective. For example, the Dutch knowledge migrant permit (*kennismigrantenvergunning, KMR)* is granted for up to five years (depending on the employment contract) and can be renewed without limitation. The ICT residence permit can be granted for a maximum of three years (for managers and technical specialists) or one year (for trainees), as noted above, but cannot be renewed. It is true that a new ICT permit might be obtained subsequent to the first one. However, depending on the Member State's implementation, the transferee first must leave EU territory for a period ranging from one day to six months. The latter is the case in the Netherlands, so an ICT residence permit based on the Directive effectively cannot be renewed, and a new posting for the same employee in the Netherlands is possible only after an interruption of at least six months.

This would not be problematic, of course, if the application of the Directive were not obligatory. It should be noted that the Dutch KMR scheme can be used for local hires, as well as for intra-corporate transferees who remain on a foreign contract and payroll. The KMR scheme is generally preferred to other schemes, not only for the length of the permit but also for its procedural swiftness (two weeks' processing time) and the rights associated with it (e.g., full spousal labor market access).

But the ICT Directive has now changed all of this, as it does not leave the Member States an option. If a transferee falls within the scope of the Directive (mainly foreign contracts and payroll), national permit schemes may not be applied and the Member State must apply the ICT Directive scheme.

In addition to the ICT permit being limited in duration and renewability, the entry conditions are in some cases more onerous than those of national schemes, so that where the national permit might successfully be applied for, the ICT permit application must be refused. For example, the ICT Directive requires that the transferee have three months' prior employment in the group of undertakings (the Directive leaves Member States the option to choose for prior employment of up to six months), whereas the KMR scheme allowed for hiring and immediate transfer to the Netherlands. Thus a newly hired employee will now, as a result of the Directive, effectively have to wait three months before being able to move to the Netherlands. Another potential obstacle is the qualification requirement (a bachelor's degree or higher, whereas the Dutch KMR scheme requires no formal education level).

When corporate employers began to realize these aspects of the ICT Directive, a certain anxiety started to build. It didn't help that the immigration authority in the Netherlands (IND) did not take a sufficiently clear position on the issues of non-renewability of the ICT permit and its obligatory character. The lack of clarity revolved around the definition of the scope of the ICT Directive—when is an applicant within the scope of the ICT Directive so that national schemes fall away?

Scope and Definitions of the ICT Directive

Article 2 of the ICT Directive limits its scope to third-country nationals who reside outside the territory of the EU Member States at the time of application, or who are residing in a Member State under the ICT Directive already. This means that for every person who does not meet one of those two criteria, the ICT Directive does not apply. For these employees, the regular KMR scheme can still be used.

The scope is further limited (via article 2 and 3 of the ICT Directive) by the fact that it must concern intra-company transfers. If it is not "intra-company," the ICT Directive does not apply. Also, if it is not a transfer because the employee gets a contract and payroll in the Netherlands (local hire), the ICT Directive does not apply.

Permit Requirements

If the ICT Directive applies, the employee must meet the requirements of article 5 of the ICT Directive to obtain the permit. As mentioned, it is important to distinguish between the scope of the ICT Directive and the requirements for a permit. The first step is the scope: Does the ICT Directive apply to this employee? If not, then other schemes like the KMR scheme might be used. If yes, then step two is to check whether the transferee meets the requirements for the ICT permit. If not, then no permit can be issued. To solve the issue, the person must be brought outside of the scope of the ICT Directive so the KMR scheme can be used (e.g., by moving the contract and payroll to the Netherlands).

Frequently Asked Questions

While initially the IND did not take a sufficiently clear position, most issues have now been clarified. The outcome is that the ICT permit can be transferred into a national permit, even if the employee remains on a foreign contract and

payroll. The process that led to this conclusion is interesting.

Since November 2016, the IND has published two new documents: the ICT Directive Frequently Asked Questions (FAQs) in Dutch dated December 8, 2016, and a translation of these FAQs into English. Although these texts have no formal legal status, it seems that the IND has chosen the form of FAQs to communicate its guidelines for the implementation of the ICT Directive scheme. The IND has never used this method before.

When the English version of the FAQs was published on February 16, 2017, the IND gave no indication that it was anything other than a literal translation. Surprisingly, however, this version differed significantly from the Dutch version of December 2016, namely on the most contested point: the renewability of the ICT permit. The Dutch version suggested that after the maximum duration of an ICT permit, the permit holder must return to his or her foreign employer: "The idea behind the ICT Directive is that after the stay in the Netherlands the employee returns to the foreign employer or goes to another EU-based undertaking of the organisation." In the English version, however, the following sentence was added to this paragraph: "However, the employee can apply for a national residence permit after the maximum period of residence."

As if to leave no room for interpretation, a whole new question-and-answer was inserted that explained that after three (or one) year(s), a transferee falls out of scope of the Directive and is therefore entitled to apply and obtain a KMR permit, even if he keeps his labor contract and payroll with the employer outside the EU.

This argument might certainly be refuted, as article 2 of the Directive reads: "This Directive shall apply to third-country nationals who reside outside the territory of the Member States at the time of application and apply to be admitted or who have been admitted to the territory of a Member State under the terms of this Directive."

The question is whether the European Commission is likely to take any action on this, as their main priority is currently to chase those Member States that have not transposed the Directive at all, which is a much bigger threat to the well-functioning of this new EU-wide permit scheme.

Conclusion

The ICT Directive is a very interesting new permit scheme that applies

throughout (most of) the EU. Multinational corporations will certainly benefit from its mobility options, although it will still take time before the practices in all Member States will be sufficiently clear and interchangeable for the EU to "feel" as one area. In terms of a new permit scheme that reinforces the options of an intracompany transfer to the EU, the Directive must be compared to local permit schemes—a test that in the Netherlands turns out negatively. The Dutch government has found a way around the obligatory character, but the solution does not seem compliant with the wording of the ICT Directive. The future will show whether such national disobedience eventually jeopardizes the success of the ICT scheme and, if so, how the European Commission will get the Member States back on the same page.

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TURKEY

Regulations on the new Turquoise Card have been published.

On March 14, 2017, regulations on the new Turquoise Card were published in the Official Gazette. In the new Law on International Workforce (work permit law of August 2016), a category of permanent residence was created for qualifying foreigners. Under Article 11 of the new law, a *Turkuaz* (Turquoise) Card will be issued to a foreign national after evaluation of his or her educational level, professional experience, contribution to science and technology, and/or investment impact in Turkey.

Turquoise Cards are issued for an indefinite term following a 3-year conditional period. Those granted a Turquoise Card generally have the same rights as those accorded to Turkish citizens, with some exemptions. Their dependents also are granted residence permits. Such applications have been awaiting the implementing regulations. Regardless of these new regulations, as of press time the system was not yet online to allow for Turquoise Card filings. A panel of experts within the Work Permit Directorate is expected to adjudicate Turquoise Card cases. Additionally, the new system will very likely include a completely new specialized application form(s). It is unclear when the system will be available online.

The regulations state that:

1. Turquoise Card applications can be filed from abroad or within Italy depending on the immigration status of the applicant.

2. The categories for a Turquoise Card include highly qualified employees, certain investors, strategic/high-impact scientists or researchers, internationally successful artists or athletes, and specialists who will promote Turkey.
3. Any Turkish government agency may issue a "Certificate of Conformity" evidencing support for the particular foreigner's application. Details regarding this certificate will be determined at a later date.
4. General criteria (scoring system) for each category include:

- Highly Qualified Employees: Level of education, prestige of educational institution, salary level, foreign language abilities, relevant professional experience
- Investors: Amount of investment, level of exports, number of employees, strategic need of sector of investment, strategic need of region where investment will occur, nature of intellectual or industrial property rights of investment
- Scientists/Researchers: Level of education and prestige of educational institution; patents, trademarks, or licenses granted to the applicant; level of innovation of their activities or field of knowledge; academic or professional titles; strategic importance to Turkey of their sector of expertise; anything that shows the importance of their professional experience or qualifications
- Athletes or Artists: Nationally or internationally recognized awards or degrees. For artists, recognition of their work
- Specialists to Promote Turkey or Turkish Culture: Duration, sustainability, influence, etc., of their promotional activities for Turkey. Activities carried out internationally; e.g., as volunteers.
- Applicants who are continuing their academic studies are not necessarily precluded from filing an application.
- A successful applicant will be given a 3-year conditional status. On an annual basis, the applicant will need to file a status report.
- Turquoise Card recipients have all the same rights as those issued indefinite work permits.
- Turquoise Card dependents are also issued residence cards.
- Turquoise Cards will be cancelled if the holder remains outside of Turkey for more than 6 months, unless he or she can prove *force majeure*. If the holder remains outside for more than 2 years, even *force majeure* will not

prevent the cancellation of the holder's card and those of his or her dependents.

The most-used category for this program is likely to be for investors from predominantly Middle Eastern countries.

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UNITED KINGDOM

This article discusses several recent developments.

Key Changes Affecting Tiers 2 and 5

On March 16, 2017, the Home Office published its latest changes to the Immigration Rules. The main changes are particularly relevant for sponsors of Tier 2 migrants and will come into effect on or after April 6, 2017. Below is an overview of the key changes that affect the Tier 2 and 5 categories, as well as other important changes.

As previously announced, an Immigration Skills Charge of £1000 per skilled worker per year is being introduced for employers in the Tier 2 (General) and Tier 2 (Intra-Company Transfer) routes. The charge is £364 for small and charitable sponsors.

There are exemptions for PhD-level occupations, Intra-Company Transfer Graduate Trainees and those switching from Tier 4 to Tier 2 in the United Kingdom.

Tier 2 (Intra-Company Transfer) migrants were previously exempt from this charge but now will pay a surcharge of £200 per person per year. Dependents will also need to pay the same amount as the main applicant.

Tier 2 (General) applicants coming to work in the education, health, and social care sectors will need to provide a criminal record certificate for each country where they have resided for 12 months or more over the preceding 10 years. This will also apply to their adult dependents.

A certificate will be required for applicants sponsored in these Standard Occupation Classification codes. Applicants in these codes outside of the Tier 2 (General) route, such as intra-company transfers, are not affected. Certificates will also be required from partners applying from overseas on or after April 6, 2017, who want to join an existing Tier 2 (General) visa holder working in one of

these sectors.

The minimum salary sponsors can offer a Tier 2 (General) worker will increase from £25,000 to £30,000 for experienced workers. The current minimum salary of £20,800 will be retained for new entrants. Note that the appropriate rate for the job specified in the relevant codes of practice (SOC codes) may well be higher and in fact many of the occupational salary rates in the codes of practice for both new entrants and experienced workers will be increased.

The high earner salary threshold will be increased from £155,300 to £159,600 (for these individuals sponsors are exempt from carrying out a Resident Labour Market Test and from the requirement to assign a restricted Certificate of Sponsorship under the Tier 2 (General) limit).

For "milkround" recruitment (where companies tour universities to recruit), changes are being made to the Resident Labour Market Test, including widening the websites that may be used for graduate recruitment from a specified list of four to any freely available, prominent, graduate recruitment website. A further change is being made whereby a candidate must be offered a job within 12 months of the completion of the advertising relied on (currently six months).

A waiver for the Resident Labour Market Test and an exemption from the Tier 2 (General) limit is being introduced for posts that support the relocation of a high-value business to the UK or a significant new inward investment project. The sponsor must be a newly registered (within the last three years) branch or subsidiary of an overseas business and the investment must involve new capital expenditure of £27 million or the creation of at least 21 new UK jobs.

The Short Term Staff category will close, meaning that all intra-company transfer workers, except graduate trainees, must qualify under a single route with a minimum salary threshold of £41,500, or the appropriate rate in the codes of practice, whichever is higher.

The salary threshold for senior intra-company transferees who are able to extend their total stay in the category to up to nine years is being reduced, from £155,300 to £120,000.

The requirement for intra-company transferees to have at least one year's experience working for the sponsor's linked entity overseas is being removed for applicants paid £73,900 or above.

Changes have been introduced to provide greater clarity and consistency as to which types of allowance will be considered against the salary requirements. Also, the closure of the Short Term Staff subcategory means that accommodation allowances can form a maximum of 30% (rather than 40%) of the total salary package for all intra-company transferees (except Graduate Trainees).

- Sponsors of creative workers in the Creative and Sporting subcategory must comply with a recruitment code of practice or otherwise take into account the needs of the resident labor market. A change is being made to waive this requirement for creative sector jobs that appear on the Shortage Occupation List.
- A further change is being made to the codes of practice for creative workers so that sponsors do not need to carry out a recruitment search where a performer is required for continuity or is engaged by a unit company in relation to productions outside the UK, rather than outside the European Economic Area (EEA), as at present. This ensures that non-EEA nationals who have performed in productions elsewhere in the EEA are not disadvantaged.
- The requirement for points-based system dependents to meet the 180-days-per-annum residency requirement in the UK to qualify for indefinite leave to remain has been removed.
- The period of overstaying that is permitted before a re-entry ban is imposed on individuals who have remained in the UK after their leave to enter or remain has expired will be reduced from 90 days to 30 days where the overstaying began on or after April 6, 2017. Unless specific exceptions apply, anyone who overstays for more than 30 days will be subject to a 12-month re-entry ban.
- To qualify for indefinite leave to remain (ILR) on or after April 6, 2022, an individual must be earning at least £37,900.
- A clarification has been made confirming that individuals may apply for a visitor visa in any country offering a visa service regardless of whether they are resident in that country.

Immigration Skills Charge

The UK government has just announced that subject to parliamentary approval, the immigration skills charge is due to be introduced on April 6, 2017.

The skills charge will apply to a sponsor of a Tier 2 worker assigned a certificate of sponsorship in the General or Intra-Company Transfer route and who will be applying from:

- Outside the UK for a visa
- Inside the UK to switch to this visa from another
- Inside the UK to extend their existing visa

There is a transitional provision whereby the skills charge does not apply if an employer is sponsoring an individual who was sponsored in Tier 2 before April 6, 2017, and is applying from inside the UK to extend his or her Tier 2 stay with either the same sponsor or a different sponsor.

This is an important exemption for Sponsors. It means that the skills charge will not apply to extension applications of an employer's existing Tier 2 workforce, provided the employer extend the workers' stay on an in-country basis. Furthermore, if an employer wishes to hire an individual already working in the UK on a Tier 2 visa granted before April 6, 2017, the employer will not need to pay the skills charge when applying for a new visa for the worker on an in-country basis.

Timings of extension applications will therefore be important to ensure applications are made timely from within the UK before the Tier 2 migrant's leave expires. This is important because if your Tier 2 employee is outside the UK when his or her visa expires, he or she will not only be subject to the cooling-off period for 12 months (unless within the high earner category) but will also be subject to the skills charge.

Other Exemptions

- A Tier 2 (Intra-company Transfer) Graduate Trainee
- A worker to do a specified PhD level occupation
- A Tier 4 student visa holder in the UK switching to a Tier 2 (General) visa
- The employer does not have to pay the skills charge for the worker's family members (dependents).

Cost of the Skills Charge

The skills charge will be £1000 per year for medium or large sponsors and £364 per year for small or charitable sponsors (including universities). It will be payable upfront and for the total period of time covered by the certificate of

sponsorship.

An employer will usually be considered to be a small business if:

- Its annual turnover is £10.2 million or less; and
- It has 50 employees or fewer.

Sponsors will need to pay the skills charge at the same time as they pay to assign a certificate of sponsorship (CoS) to sponsor someone to do a skilled job in the UK. The money collected by the Home Office will be used by the Department for Education to address skills gaps in the UK workforce.

Steps an Employer Should Take Immediately

An employer that knows it will need to bring Tier 2 migrants to the UK this year should consider bringing forward recruitment plans so that it is in a position to apply for the Tier 2 entry clearance before April 6, 2017. The critical date will be the date of filing of the online application. Therefore, provided the entry clearance application is submitted online before April 6, the employer can avoid the skills charge. The employer will need to be mindful of the start date of employment in the UK, as new guidance on start dates has also been issued.

CoS Start Date

The UK government has also issued new guidance on the CoS start date, which will need to be taken into account when considering the start date for employment in the UK for Tier 2 employees. The start date given on the CoS must be the date on which the migrant employee will start working for the employer. The employee will be granted entry clearance no more than 14 days before the start date given on the CoS. Once the entry clearance has been granted, it is possible to delay this start date, but in the case of a Tier 2 (General) migrant, any revised start date cannot be put back by more than four weeks from the original start date on the CoS. However, under the Tier 2 (Intra-Company Transfer) route, it is possible for the start date to exceed the four weeks, provided the employee continues to be paid by the sending overseas entity.

How Will Triggering Article 50 Affect Employers of EU Nationals?

The House of Commons has voted to reject the House of Lords amendment that sought to guarantee the rights of EU nationals resident in the UK before Brexit negotiations begin. This paves the way for Article 50 of the Lisbon treaty

to be triggered shortly, when the two-year negotiation process will begin for the UK to leave the European Union. Although this two-year period can be extended with the agreement of all 27 members, it is unlikely in reality that this will be achievable. While the government has stated that negotiations regarding the rights of EU citizens will be a priority once Article 50 is triggered, until this issue is decided many EU nationals will remain in limbo in the UK with ongoing uncertainties regarding whether they can continue to reside in the UK.

This will come as a blow to many employers of EU migrants who now continue to face uncertainty about whether their EU workforce will continue to have residency rights in the UK.

There are strong indications that the government will grant permanent residence to those who have resided in the UK for at least five years as qualified persons; i.e., those who were workers, self-employed, self-sufficient, students, or job seekers prior to a not-yet-determined cut-off date. This could happen when the UK eventually leaves the EU, but there is a strong possibility it could be as soon as the date of triggering Article 50. It has been widely reported in the press that the cut-off date will be when the government triggers Article 50, and indeed this date has been recommended in a report by *British Future* published in December 2016.

To ease employees' concerns, employers may wish to conduct an audit of their EU employees and family members of EU nationals to ascertain whether they can meet the five-year residency requirement.

As part of this process, employees should be encouraged to collect documents evidencing their status as employed, self-employed, a student, or self-sufficient. It is important to note that the five-year qualifying period can consist of periods of stay consecutively in any of these categories. For any period when the employee was a student or self-sufficient, he or she will need evidence of comprehensive sickness insurance. Employees will also need to show that they have not spent more than six months outside the UK in any 12-month period over the five years. On this point, where an employee has resided in the UK in excess of five years, he or she can use a five-year period where the qualifying conditions are easily met with supporting documentation and where he or she can show no absence from the UK for more than two years after the five-year qualifying period chosen.

Alternatively, employers could await the outcome of the negotiations to be

conducted by the government and in the meantime their EU employees' rights to live and work in the UK will continue until Britain leaves the EU and during any agreed-upon transitional period.

Individuals can apply to the Home Office for a registration certificate or, if they have already been in the UK for five years, a document certifying permanent residence. These documents do not in themselves confer any rights but are evidence that the government has acknowledged the individual is exercising his or her right of residence or has acquired permanent residence.

If an individual has been living in the UK for at least six years, he or she could consider applying to the Home Office for naturalization as a British citizen. This can only be done after obtaining a document certifying permanent residence. Before applying, individuals will need to check whether their country of origin permits dual nationality and whether it will affect their tax position. If they have any non-EU family members—for example, spouses or dependent relatives—becoming British could affect their ability to rely on the individual's EU rights and advice should be sought on this.

Individuals could also consider applying for a British passport for any child born in the UK. A child born in the UK on or after April 30, 2006, to an EU citizen who acquired permanent residence before the child's birth is automatically a British citizen, even if the EU citizen parent has never held a document certifying permanent residence. Different rules apply for children born before this date but they could be eligible to be registered as British.

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