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US IMMIGRATION & NATIONALITY LAW

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Feature Article

DOCUMENT RETENTION POLICIES AND PRACTICES: AN OVERVIEW – This article provides an overview of document retention policies and practices in Canada and Italy.

Country Updates

COLOMBIA – This article summarizes several developments in Colombia: All visa procedures must now be completed online; the Migrant Mercosur visa for Chilean nationals has been suspended due to a lack of reciprocity; there has been a breakdown of diplomatic relations between Colombia and Venezuela that has affected migratory processes; and there are new conditions for Venezuelans traveling to Colombia with expired passports.

EUROPEAN UNION – As part of "red tape" reduction for European Union (EU) citizens living or working in another Member State, the apostille is no longer required on public documents issued by EU authorities.

FRANCE – A government order has established the rights of United Kingdom (UK) nationals continuing to stay in France in case of a "hard Brexit."

ITALY – A new decree outlines measures that will apply if the UK leaves the EU without a deal.

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Feature Article

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Canada

In Canada, rules related to law firms retaining client documents and information are governed by provincial and territorial law societies. Accordingly, there are potentially 13 different sets of professional rules of conduct that govern document retention. Generally speaking, the provincial and territorial law societies will not set a firm rule but instead will make a recommendation for a best practice. In Ontario, lawyers are advised to keep client documents for 7 years, except Trust Account documents, which must be kept for 10 years. Trust Accounts are used in Canada to receive client fees in advance of work being completed and can also be used to hold client funds pending the completion of commercial or real estate transactions where the funds are applied to the purchase price. For this reason, lawyers are held to a higher standard of record-keeping for all documentation dealing with the handling of client funds. The Canada Revenue Agency also requires that businesses keep tax records for 7 years.

Recently, there have been a number of government initiatives and changes in legislation related to compliance with respect to immigration applications to support hiring foreign workers in Canada. These include Administrative Monetary Penalties against employers for non-compliance. Businesses that hire foreign workers must keep records related to the hiring and employment of the foreign worker, including copies of work permits, payroll documents, job descriptions, and timesheets for up to 6 years from the date of hire. In light of this requirement, immigration law firms providing legal services to businesses that hire foreign workers should also be keeping records for at least 6 years.

Italy

In Italy, an attorney must collect and store only the data that are necessary (not superfluous) for the achievement of the client's objectives.

The data can be deleted or returned at the client’s request. There is no mandatory requirement to keep data for a certain time, unless it is necessary for the file’s completion. However, lawyers are subject to malpractice claims for 10 years, and it is therefore advisable to keep the necessary data and documents until the expiration of the statute of limitation for a possible claim.

Regarding immigration-related documents, the law does not set forth a specific

term, but considering that immigration compliance is also linked to tax and social security issues, it is advisable to store documents for at least 7 years, the statute of limitation for any tax claims.

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Country Updates

COLOMBIA

This article summarizes several developments in Colombia: All visa procedures must now be completed online; the Migrant Mercosur visa for Chilean nationals has been suspended due to a lack of reciprocity; there has been a breakdown of diplomatic relations between Colombia and Venezuela that has affected migratory processes; and there are new conditions for Venezuelans traveling to Colombia with expired passports.

Changes in the Visa Application Process

The Ministry of Foreign Affairs has announced that all visa procedures must now be completed online. Foreign nationals can only approach the Ministry when they are summoned by the authority or when they have received approval of their visa and they need the visa sticker stamped on the passport.

This change will affect processing times for all visas, Visitor (V), Migrant (M), and Resident (R), taking into consideration that in the past a visa could be obtained in person in a couple of hours. It will now be necessary to obtain approval of the application online, which takes approximately five business days.

Mercosur Visa Temporarily Suspended for Chilean Nationals

The Ministry of Foreign Affairs has suspended the issuance of the Migrant Mercosur visa for Chilean nationals. This decision was made due to the failure to apply the principle of reciprocity, because the Mercosur visa is not being issued for Colombian nationals in Chile.

Chilean nationals who are in the process of obtaining a Mercosur visa and continue to have a need to enter Colombia must reevaluate the existing migratory alternatives and proceed with a request for a different type of visa to enter and remain in the country in regular migratory status.

However, for foreign nationals who still hold a visa in this category, its validity

will be respected and they should not make any changes at this time.

Breakdown of Diplomatic Relations Between Colombia and Venezuela and Its Impact on Migratory Processes

Due to the breakdown of diplomatic relations between Colombia and Venezuela, consular services in both countries have stopped and no further requests will be processed until further notice.

To provide an avenue for the migration of Venezuelan nationals to Colombia, the Ministry of Foreign Affairs has enabled its online platform for Venezuelans who wish to apply for a Colombian visa so they can proceed with their request.

On the other hand, Colombian nationals who require a visa or other processes through any Venezuelan consulate in Colombia will need to wait for these offices to resume their normal activities. They may wish to consider searching for an alternative, even if that will mean the process is completed in Venezuela or before a consulate abroad.

New Conditions for Venezuelans Traveling to Colombia with Expired Passports

The Ministry of Foreign Affairs has authorized Venezuelan nationals to enter, transit through, and leave the national territory of Colombia, even when their passports have expired. Passports in this condition may continue to be used for two years from the due date.

Likewise, Venezuelan passport holders under the conditions mentioned above may receive an Entry and Stay Permit granted by Migración Colombia upon entering the country. Exceptionally, those passports with an entry stamp will be valid as identification documents in the national territory of Colombia.

For visa processes, the Ministry has established that Venezuelan nationals who are holders of expired passports may request the issuance of a visa as long as it complies with the other provisions in force for the issuance of the corresponding visa.

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EUROPEAN UNION

As part of "red tape" reduction for European Union (EU) citizens living or working in another Member State, the apostille is no longer required on public documents

issued by EU authorities.

As of February 16, 2019, the entry into force of Regulation 2016/1191 simplifies the circulation of certain public documents in the EU. A number of bureaucratic procedures will no longer be necessary when presenting public documents issued in one EU country to the authorities of another EU country.

Remarkably, public documents issued by the authorities of an EU country must now be accepted without the need of an *apostille* (authenticity stamp). Also, the regulation simplifies the rules concerning translation requirements.

A European Commission press release on this topic is at http://europa.eu/rapid/press-release_IP-19-1148_en.htm.

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FRANCE

A government order has established the rights of United Kingdom (UK) nationals continuing to stay in France after March 29, 2019, in case of a "hard Brexit."

The French government published an order determining the right of UK nationals continuing to stay in France after the Brexit date of March 29, 2019, in the most probable event of no exit agreement being reached between the UK and the European Union (EU). Such UK nationals will be allowed three to 12 months to acquire permanent residency if they have been in France for five years or more as of March 30, 2019, or acquire the appropriate permit to stay, if they have been in France as of that date for less than five years.

Ordonnance n° 2019-76 of 6 February 2019 was published in the *Journal Officiel* on February 7. The following are the principal terms affecting the immigration rights of UK nationals.

A transition period of 3 to 12 months. UK nationals continuing their stay and professional activities beyond the Brexit date may do so, as before such date, for a minimum period of three months from the Brexit date. A decree will be published that will set the final end date of the transition, which will be within 12 months of the Brexit date. Beyond this final end date, UK nationals must be in possession of the appropriate permits covering their stay and professional activities in France (Article 1 of the Order).

Presence of less than five years. UK nationals having resided for less than five

years as of the Brexit date must apply for the various permits to stay according to their status (e.g., student, employee, temporary worker, posted worker, independent professional, unemployment beneficiary, family member, long-term visitor). Such permits, when allowing work, will not be conditioned on labor market tests (Article 2).

Presence of five years or more. UK nationals having resided for five years or more in France as of the Brexit date will be entitled to the Residency Card, with 10-year validity (Article 3).

UK nationals practicing law in France. UK nationals who exercise the profession of lawyer (*avocat*) in France, based on their EU rights, may continue to do so for a period of 12 months from the Brexit date. Such lawyers may benefit from the disposition of Article 89 of the law of 31 December 1971 (Article 13).

Article 89 of the law of 31 December 1971 facilitates the registration of foreign lawyers with a French bar association after showing that they "effectively and regularly practiced French law on national territory for a period of at least 3 years." Such activity must be demonstrated to the French bar association with which the foreign lawyer wishes to register. If over the three-year period the practice of French law was for a shorter period, the bar association will have discretion to determine if the foreign lawyer can practice French law.

Subsidiaries of law firms formed under UK law and registered with a French bar association on the Brexit date may continue to pursue their activities in France beyond that date, even if no lawyer registered under a UK qualification is still practicing within that structure. No new structure under UK law may be created in France after the Brexit date (Article 16).

Reciprocity required. The Order states that the preferential treatment provided for UK nationals can be suspended by a State Council decree, after three months following the Brexit date, if the French government observes that the UK government has not taken equivalent dispositions toward French nationals (Article 19).

Other areas. The 10-page order is quite dense. It touches on many areas (such as recognition of professional qualifications, cross-border service provision, welfare, health coverage, and jobs reserved for French and EU nationals). A decree to implement this order will soon be published.

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ITALY

A new decree outlines measures that will apply if the UK leaves the EU without a deal.

With Decree 25 March 2019, n. 22, the Italian government has outlined the measures that will apply if the United Kingdom (UK) leaves the European Union (EU) without a deal. In particular, article 14 refers to the residency rights of UK nationals and their non-EU family members living in Italy, and article 15 refers to citizenship applications.

UK citizens residing in Italy and their non-EU family members can apply for EU residence permits for long-term residents by December 31, 2020, if upon the date of Brexit they have regularly resided in Italy for at least five years. UK citizens residing in Italy and their non-EU family members can apply for EU residence permits "for residency" (per residenza), valid for five years, if upon the date of Brexit they have regularly resided in Italy for less than five years.

Starting on January 1, 2021, UK citizens and their non-EU family members who do not comply with these provisions will be subject to the same sanctions applicable to all noncompliant non-EU nationals.

UK citizens who are regularly residing in Italy for at least four years upon the date of Brexit can apply for Italian citizenship until December 31, 2020. Applications filed after that date will be processed under the same regulations applicable to all other non-EU nationals.

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UNITED KINGDOM

This article provides updates as of press time on the fast-changing Brexit situation. ***Also, new "e-gates" are now open to U.S. citizens and others.***

Brexit Update: EU Extends Deadline to October 31

In a tumultuous period for British politics, the House of Commons rejected Prime Minister (PM) Theresa May's Brexit deal for a second time on March 12, 2019, by a wide margin of 149 votes. The following day, in a legally non-binding but politically significant motion, Parliament rejected leaving the EU without a Withdrawal Agreement and a Framework for the Future Relationship.

On March 14, House members rejected a series of amendments to the UK

government's motion to extend Article 50. The first amendment to hold a second referendum was overwhelmingly defeated 334 to 85 (with the Labour party abstaining from the vote). The second, to enable the House to debate on the next steps in Brexit on March 20, was narrowly rejected 314 to 312. And the third amendment, which would have instructed the PM to request additional time from the EU in order to find a majority of support for an alternative approach, also failed to garner enough support in a vote of 318 to 302.

Among other things, following the amendments' defeat, the House passed the government's motion to extend Article 50 until June 30, 2019, by a wide margin of 412 in favor to 202 against. Subsequently, the EU extended the Brexit deadline to October 31, 2019, giving the UK another six months. As of press time, there was a range of potential future scenarios and the outcome was far from certain. The UK remains a member of the EU for the time being, but the ongoing uncertainty has created problems for businesses and investors in the UK. Stay tuned.

E-Gates

As of March 11, 2019, nationals of the United States and six other countries (Australia, Canada, Japan, New Zealand, Singapore, and South Korea) can now use electronic passport control gates when they enter the UK. People from these countries who do not already have a visa will automatically be granted entry as a standard visitor for six months, with the usual prohibition on employment and recourse to public funds.

The new system was announced in October 2018, and the legislation enabling it was passed in February 2019.

At the moment, electronic passport control gates—known as e-gates or ePassport gates—can be used by British and EU nationals aged 12 and over.

The following groups of people should not use e-gates:

- People who are entering the UK for the first time on a different type of visa, such as a spouse visa. These people must get their visa stamped by an Immigration Officer the first time they enter the UK.
- People who do not have a visa and are seeking entry for a different purpose; for example, under the Tier 5 (Temporary Worker) Creative and Sporting category or the Visitor (Permitted Paid Engagements) category.

These people must see an Immigration Officer and ask to be stamped in under the appropriate category.
- People who have had immigration problems in the UK and are hoping to slip in without being questioned. Passengers using e-gates are checked against Border Force systems. If the person is flagged on these systems, the gate will not open and they will be taken aside for questioning.

The new system will make entry to the UK much quicker for people traveling on business or for tourism.

Business travelers and their employers should bear in mind that the same restrictions apply to people entering as visitors regardless of whether they are stamped in by an Immigration Officer or use an e-gate. Visitors are not allowed to work or study in the UK except in very limited circumstances. They also cannot live in the UK for extended periods. The Home Office already collects entry and exit data from airlines and other carriers taking people to and from the UK. Anyone using e-gates can also expect to have their movements tracked. Visitors who appear to be spending most of their time in the UK will run into trouble, whether or not they use e-gates.

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