



GLOBAL IMMIGRATION UPDATE - DECEMBER 04, 2023

Posted on December 4, 2023 by Cyrus Mehta

FEATURE ARTICLE

[RED FLAGS IN EMPLOYMENT LAW RELATED TO IMMIGRATION: AN OVERVIEW](#) – This article provides an update on red flags in employment law related to immigration in several countries.

COUNTRY UPDATES

[ITALY](#) – On November 13, **2023, the European Union (EU) Council adopted new rules to allow online filing of Schengen visa applications.** Also, a measure has been introduced under which some non-EU citizens can pay a fee to register for the Italian National Health Service. In other news, the Philippine consulate is cautioning Filipinos against falling victim to illegal recruitment schemes targeting Italy.

[RUSSIA](#) – The Russian government has changed the migration registration rules.

[SPAIN](#) – Spain has partially implemented European Union (EU) Directive 2021/1883 concerning the conditions of entry and residence for highly qualified employment of third-country nationals.

[UNITED KINGDOM](#) – As expected, UK Visas and Immigration fees increased on October 4, 2023.

Firm in the News

Feature Article

RED FLAGS IN EMPLOYMENT LAW RELATED TO IMMIGRATION: AN OVERVIEW

This article provides an update on red flags in employment law related to immigration in several countries.

Italy

To apply for a work permit for a foreign national, a company must be legally registered in Italy. It is possible to use a professional employer organization/employer of record (PEO/EOR) company under certain conditions:

1. The PEO/EOR company must be registered in Italy as a branch or subsidiary (it cannot use a company registered in another European Union (EU) country);
1. The PEO/EOR company must be authorized by the Italian Labor Agency and have a license as [Agenzia per il Lavoro](#); and
2. There must a contract signed between the PEO/EOR and the final customer (the company where the worker will be assigned to work) (in accordance with article 30, law Decree n. 81/2015). Companies can hire workers as "temporary agents" only if they execute a contract with the company where the worker is assigned to work.

When intending to hire a foreign worker, the employer must always make sure the foreign worker holds a permit type that allows him or her to work. There are no formal, government-mandated procedures or systems for verifying an employee's right to work in Italy. The employer must verify independently that the person holds a visa/permit with the required permission to work.

Entry into the country for work purposes (either as subordinate employed or self-employed job) is subject to the specific quotas released by the government for the intake of foreign workers. An exception to the quota system is for certain categories of workers (e.g., highly skilled workers). Two cases are possible when an Italian employer is willing to hire a foreign worker:

1. The non-EU candidate already resides in Italy. In that case, it is the employer's duty to check that the worker has a permit that allows work (e.g., permit for work, permit for family reasons); or
2. The non-EU candidate resides outside Italy. In that case, when quotas are available or anytime in case of a quota-exempt category of worker, the Italian employer must obtain a work permit clearance from the immigration authorities (average three-month processing time) for the

employee to be eligible to apply for a work visa at the Italian consulate in his or her country of residence, enter Italy, and complete the in-country immigration procedures. The Italian employer is authorized to hire the worker only after the worker has obtained the work permit and visa and arrived in Italy. The employee can therefore be hired while the residence permit application is pending or, in the context of a renewal, during the renewal process, provided the application has been filed within 60 days after the permit expiration date and the foreign worker has the renewal receipt.

Netherlands

The intersection of employment law and immigration law in the Netherlands is critical for employers to navigate. As in most jurisdictions, employers play a central role in obtaining and supporting work-related visas for their foreign workers. In addition, most work visas issued are for highly skilled workers, which can only be obtained if the employer is a recognized sponsor that has stricter obligations than other sponsors. There is high scrutiny of labor conditions and salary thresholds.

Red flags include:

1. **Awareness of exemptions.** Non-European Union (EU)/European Economic Area (EEA)/Swiss employees need work authorization. Note that the United Kingdom is no longer a member of the EU or the EEA.
2. **Inadequate verification of resident status:** Employers should verify the resident status of foreign employees. Without exception, they must identify the employee on the work site and with the original residence card or (in the case of EU/EEA/Swiss) passport. They must make a photocopy of this document and keep it in their personnel files for five years after the employee has stopped working for the company.
3. **Non-compliance with minimum salary requirements.** In particular, highly skilled migrant (HSM) permits are subject to strict minimum salary requirements. Employers must continue to meet these requirements to comply with immigration laws. Non-compliance can lead to penalties and can affect the validity of the employee's permit. In practice, companies in the Netherlands often seem to be more concerned about the potential revocation of their employee's residence permit than about the financial penalties, which are not excessively high for what qualifies as

administrative infractions, not criminal offenses.

4. **Lack of reporting to immigration authorities.** Employers must report relevant changes in the employment status of foreign workers to the immigration authority, *Immigratie en Naturalisatiedienst* (IND). Failure to fulfill reporting obligations can result in penalties.
5. **Inadequate management of permit renewal.** Employers should systematically monitor the expiration dates of residence permits and initiate the renewal process in a timely manner to avoid interruptions in employment. No less important, salary thresholds change every year. When a permit is renewed, the salary must meet the current threshold amount. A renewal can therefore lead to the necessity of meeting a higher salary threshold than the employee would otherwise have been awarded.
6. **Amendment of salary due to leave situations.** In case of sick leave, employers in the Netherlands must continue making salary payments for a maximum of 24 months before being allowed to terminate the employment contract. The minimum percentage of the employee's salary that must be paid is 70 percent of the regular salary. In practice, some employers pay the full salary; others stipulate a decrease in the employment contract. If the decrease is 70 percent, for example, this could make the salary drop below the applicable threshold. In case of short, temporary sick leave, the HSM permit cannot be revoked; in case of long-term sickness, the permit can be revoked. The IND does not clearly distinguish between short- and long-term sick leave. Unpaid leave is even more problematic. Only unpaid parental leave is allowed.
7. **Incomplete or inaccurate documentation.** Proper recordkeeping of foreign employees' documents and status is one of the obligations of employers, particularly in the case of recognized sponsors. Incomplete or inaccurate completion of immigration-related paperwork, such as for residence permits or work permits, can lead to sanctions.
8. **Foreign employees on a partner visa.** Employers may have foreign employees for whom they are not the sponsor; dependent visas in general include full work authorization in the Netherlands. If the employee's relationship ends, the visa may be revoked. It is therefore advisable to check with the employee on a regular basis to ascertain whether their permit is still valid and/or agree with the employee that the employer is granted power of attorney to check the employee's status with the IND.

More generally, employers in the Netherlands should seek legal advice to ensure they are aware of and compliant with the latest immigration laws and employment regulations. Immigration laws can be complex and subject to change, so staying informed and proactive is crucial for avoiding legal issues.

Turkey

Turkey's immigration procedures are very entwined with local employment law, as is the case in most countries. Issues related to employment law, social security law, and tax must be considered by the Turkish employer sponsoring the work permit.

To start, the Turkish sponsoring company will be considered as the employer of the foreigner regardless of whether the person is "posted" to Turkey from a company outside Turkey while remaining on the foreign payroll and therefore "employed" abroad. This means that a fully executed Turkish employment agreement between the employee and the Turkish entity sponsor must be filed. Proof of an employment agreement with the sending company abroad or an offer letter will not suffice.

The terms and conditions of employment in Turkey apply to a work permit holder, including the employer's provision of social security and health insurance contributions, and the employer's restrictions on termination according to Turkish employment law. Also, data privacy for foreigners on work permits must be protected by the sponsoring employer according to Turkey's Data Protection Law (which is quite similar to the European Union's General Data Protection Regulations).

Additionally, as the work permit is adjudicated by a directorate under the Ministry of Labor (MoL), any non-compliance perceived during the work permit filing/renewal process or observed in an MoL inspection, will be forwarded to the appropriate directorate within the MoL, such as Social Security, Employee Health and Safety, or National Health Care, as applicable.

[Back to Top](#)

Country Updates

ITALY

On November 13, 2023, the European Union (EU) Council adopted new rules to allow online filing of Schengen visa applications. Also, a measure has been

introduced under which some non-EU citizens can pay a fee to register for the Italian National Health Service. In other news, the Philippine consulate is cautioning Filipinos against falling victim to illegal recruitment schemes targeting Italy.

New Rules for Online Filing of Schengen Visa Applications

The new rules for online filing of Schengen visa applications (two regulations) will be published in the Official Gazette of the EU and will enter into force on the twentieth day after publication. **The date on which the new rules will enter into force depends on when technical work on the visa platform and the digital visa has been concluded.**

The two regulations:

- **Establish an EU visa application platform**, where, with some exceptions, Schengen visa applications will be submitted. Through this platform, applicants can input all relevant information, upload electronic copies of their travel documents and supporting materials, and complete their visa fee payments.
- **Eliminate the need for physical visits to the consulate in most cases.** Generally, in-person appearances will only be required for first-time applicants, individuals with expired biometric data, and those holding a new travel document.
- **Substitute the existing visa sticker** with a cryptographically signed barcode for enhanced security.

EU Blue Card: New Rules for Highly Qualified Workers

On October 16, 2023, the Italian Council of Ministers approved a legislative decree implementing [Directive \(EU\) 2021/1883](#) and introducing new rules on the entry and residence of highly qualified foreign workers ([EU Blue Card](#)) approved by the government. The new rules are expected to simplify entry and residence conditions, guarantee more flexibility, and facilitate family reunification. The decree will enter into force after publication in the Official Gazette.

Healthcare Measure Introduced

The Italian Government has approved a draft budget law for 2024 that introduces a measure by which some non-EU citizens will have the option to register for the Italian National Health Service (NHS) by paying an annual

contribution of 2,000 euros.

The Ministry of Health clarified that this rule applies to specific categories of non-EU citizens who are not entitled to compulsory registration with the Italian NHS. The categories include students and au pairs staying in Italy for less than three months, individuals with a residence permit for elective residence, religious personnel, diplomatic and consular staff, non-EU seconded employees of companies, foreigners participating in volunteer programs, and parents over the age of 65 for family reunification.

The rule does not affect those who are already compulsorily registered with the NHS, such as individuals with various types of residence permits, unaccompanied foreign minors, and individuals awaiting the issuance of their first residence permits.

Warning About Illegal Recruitment Schemes

In response to an announcement by the Italian government about the admission of 452,000 foreign nationals for employment over the next three years, the Philippine consulate is [cautioning Filipinos](#) against falling victim to illegal recruitment schemes targeting Italy.

Philippine Consul General Elmer Cato, based in Milan, has issued an advisory urging Filipinos to exercise caution due to the potential for unscrupulous individuals to exploit the Italian government's announcement. The consulate's warning comes after the Department of Migrant Workers revealed that more than 200 Overseas Filipino Workers allegedly became victims of two Milan-based companies.

Initial reports indicate that the modus operandi of these agencies involves targeting Filipinos in Italy and offering jobs in Europe to their unemployed relatives in the Philippines. However, victims are allegedly coerced into paying significant processing fees.

The Consul emphasized the consulate's commitment to preventing further victimization, stating, "We do not want any more of our compatriots to fall prey to the predatory practices of certain individuals and agencies here in Milan who may exploit this announcement to defraud others." The consulate has been actively addressing complaints from Filipinos who have paid exorbitant fees to individuals and agencies in Milan in exchange for nonexistent jobs. The Consul confirmed that investigations are underway, with efforts focused on gathering

evidence, identifying witnesses, and collaborating with local authorities.

Investor Visa Program Suspended for Dual Nationals With Russian or Belarusian Citizenship

On July 14, 2023, the Italian Government re-introduced a suspension of the Italy Investor Visa Program for Russian and Belarusian citizens. According to reports, **this measure has now been extended also to those Russian and/or Belarusian nationals who applied and obtained the Ministry clearance using a second citizenship.**

The extension may also **affect applicants who have already received the investor visa** and are waiting for the issuance of their residence permit cards.

[Back to Top](#)

RUSSIA

The Russian government has changed the migration registration rules.

In accordance with amendments to Federal Law No. 109-FZ of July 18, 2006, "On Migration Registration of Foreign Citizens and Stateless Persons in the Russian Federation," which entered into force on October 26, 2023, foreign citizens can submit directly to the migration authority a notification of arrival at the place of stay in the following cases:

- 1. The foreign national lives in premises owned by a citizen of the Russian Federation** (except a hotel, rest home, medical organization, etc., and except at the address of the organization in which a person carries out work). Both parties must have a confirmed personal account on the portal gosuslugi.ru: the foreign citizen to submit a notification of his or her arrival in electronic form and for children under 18, and the owner of the residential premises to confirm consent;
- 2. The foreign national resides in the premises as stated in the application for a letter of invitation** to the Russian Federation as the intended place of stay (in case of entry to Russia on a visa). A foreign national submits such a notification to the migration registration authority in person. This rule does not apply to cases of accommodation in a hotel, rest home, medical organization, etc., or at the address of the organization in which a person carries out work;
- 3. The foreign national and the receiving party conclude a residential**

lease agreement. A foreign national submits to the migration registration authority directly in person or in electronic form a notification of arrival at the place of stay and arrival at the same place for children under 18 years specified in the residential lease agreement.

These changes have expanded the list below according to which a foreign national can submit in person a notification of arrival at the place of stay to the Ministry of Internal Affairs:

1. **If there are documents confirming reasons that prevent the receiving party from sending a notification of the arrival** of a foreign national at the place of stay to the migration registration authority, this notification should be submitted according to the established regulations to the migration authority by that foreign national;
2. **If a foreign national owns residential premises on the territory of Russia**, he or she may, if actually living at that address, declare it as his or her place of residence. In this case, he or she would submit a notification of arrival at that place to the migration registration authority directly in person, in electronic form, or through a multifunctional center;
3. **The receiving party, which is the owner of the residential premises, is located outside Russia** (for example, a Russian citizen permanently residing outside the Russian Federation, a foreign citizen, a foreign legal entity). A foreign national must personally notify the migration authority of arrival at the place of stay, additionally providing notarized consent of the receiving party.

[Back to Top](#)

SPAIN

Spain has partially implemented European Union (EU) Directive 2021/1883 concerning the conditions of entry and residence for highly qualified employment of third-country nationals.

This implementation is being carried out through amendments to Spain's Entrepreneurs Act 14/2013, establishing two schemes for highly qualified professionals (HQPs) within the Large Companies Unit. The most substantial features are:

National Residence Permit for Highly Qualified Professionals

This category already exists, but the permit's requirements have been updated to include individuals with qualifications equivalent to at least level 1 of the Spanish Qualifications Framework or with professional experience of at least three years comparable to the required qualification. The labor market test does not apply.

The permit validity aligns with the employment contract duration plus an additional three months, with a maximum period of three years.

Residence Permit for Highly Qualified Professionals—EU Blue Card

This category is for third-country nationals with higher education qualifications of at least three years (equivalent to level 2 of the Spanish Qualifications Framework or level 6 of the European Qualifications Framework) or at least five years of relevant professional experience. For Information and communications technology managers and professionals, the required experience is reduced to three years within seven years before applying for an EU Blue Card. The labor market test does not apply.

The salary threshold ranges between 1.0 and 1.6 times the average gross annual salary, with a possibility of applying at 80 percent of the threshold under specific circumstances.

The permit validity aligns with the employment contract duration plus an additional three months, with a maximum period of three years.

Holders of an EU Blue Card from another Member State can stay up to 90 days in any 180-day period in Spain without authorization. To stay longer, they must apply for the EU Blue Card in Spain, with a streamlined process allowing them to start working upon application submission.

Dependents of EU Blue Card holders can apply for a residence permit in Spain unless they hold international protection status in Spain.

The implementation provides pathways for highly qualified professionals to work and reside in Spain, with adjustments made to existing permits and the introduction of the EU Blue Card system to facilitate mobility within the EU for qualified workers.

[Back to Top](#)

UNITED KINGDOM

As expected, UK Visas and Immigration (UKVI) fees increased on October 4, 2023.

The precise timing of the [Immigration Health Surcharge](#) (IHS) increase was unknown. It is now known from the [draft legislation](#) that the IHS will increase no sooner than **January 16, 2024**. Assuming both Houses of Parliament approve it, the increase will start on that date or 21 days after the legislation is passed, whichever is later.

The IHS headline rate will increase from £624 to £1,035 per year of the visa. The discounted rate (for students, Youth Mobility Scheme applicants, and under 18s) will increase from £470 to £776.

Those who have any UK visa applications in the pipeline should submit them before January 16, 2024, if possible.

[Back to Top](#)

Firm in the News

[Cyrus Mehta](#) was quoted by *Forbes* in [Apple Settles \\$25 Million DOJ Immigrant Lawsuit, Regardless of PERM](#). **Mr. Mehta** said, "The safest course is for employers to hew as closely as possible to their non-PERM recruitment practices. Thus, while it is lawful for employers to ask applicants to send resumes only by postal mail under the PERM regulations, if the employer otherwise allows applicants to send their resumes electronically, the employer should be consistent and require applicants even responding to PERM recruitment to send their resumes electronically." He said employers are caught between the conflicting requirements of two federal agencies.

Mr. Mehta and **Ms. Box** were cited by *Forbes* in [SpaceX Court Win Could End DOJ Immigrant Lawsuits](#). The article cited their [blog](#) in explaining that "the Appointments-Clause challenge by Space X, if not overturned by the Fifth Circuit or Supreme Court, could provide a pathway for other employers to fend off investigations and lawsuits by the when they conduct recruitment under the foreign labor certification program."

Mr. Mehta was quoted by Bloomberg Law's *Daily Labor Report* in [Apple's Hiring Bias Case Reveals Big Tech Foreign Worker Dilemma](#). He said it's hard to know how much of an enforcement focus the PERM process will receive beyond the two tech giants. He noted, however, that a recent [court victory](#) for Elon Musk's SpaceX may open a pathway for other companies to challenge Department of

Justice (DOJ) investigations. "One wonders why Apple and Facebook copped a settlement rather than contesting the lawsuit like SpaceX did," Mr. Mehta said.

Mr. Mehta received the [Corporate Immigration Lawyer of the Year](#) award from Who's Who Legal (WWL) on November 9, 2023, at a ceremony in London, England. He is also a [WWL Global Elite Thought Leader](#).

Mr. Mehta was quoted by [Law360 in DHS Rule To Thwart H-1B Visa Lottery Abuse Earns Praise](#) (available by registering). Mr. Mehta said he was concerned about an element of the proposed rule that would add language to further define what constitutes a specialty occupation. He said that provision could unfairly exclude some foreign workers with MBAs from getting H-1B visas. Under the proposed rule, he said, an MBA degree-holder offered a job in marketing or finance, for example, would need to prove that the degree was specialized in those areas. "Undoubtedly there are MBA degrees where you can show that your coursework or whatever was in finance or marketing, but I don't see why a business administration degree has been singled out as generalized as opposed to a law degree or a medical degree," he said.

Mr. Mehta was quoted in the *Times of India* in [Proposed H-1B Rule: Redefining Specialty Occupation, the Employee's Degree Must Co-Relate to the Job](#). Among other things, Mr. Mehta said, "There are some features in the proposed rule that will incentivize the USCIS to issue requests for evidence and potentially deny the H-1B application. A job-position will not be considered a specialty occupation for H-1B purposes if attainment of a general degree, such as business administration or liberal arts, without further specialization, is sufficient to qualify for the position."

[Back to Top](#)