

Global Directions

A Mayer Brown Global People Solution™ Publication

Mobility Trends in Mid-November 2017

Mayer Brown's Global Directions is a summary of recent immigration and mobility trends arising in key jurisdictions around the globe. This high-level overview alerts recipients to select changes in law and practice that may affect their global mobility programs.

Americas

United States

USCIS Changes Policy regarding Adjudication of L-1 and H-1B Extension Petitions

On October 23, 2017, US Citizenship and Immigration Services ("USCIS") released its first policy memorandum under its newly appointed director, L. Francis Cissna, which eliminated a longstanding USCIS policy of deference in nonimmigrant extension petitions where the underlying parties and facts remained the same. In 2004 and 2015 memoranda, USCIS had instructed reviewing officers to give deference to the findings of a previously approved petition as long as the key elements were unchanged and there was no evidence of a material error or fraud related to the prior determination. The updated policy guidance rescinds the previous policy.

In the announcement of the revised policy, the USCIS director noted that "USCIS officers are at the front lines of the administration's efforts to enhance the integrity of the immigration system. This updated guidance provides clear direction to help advance policies that protect the interests of U.S. workers."

In practice, the change in policy increases the scrutiny on nonimmigrant extension petition adjudications, including in the H-1B and L-1 context.

H-1B Worksite Visits Expected to Become More Frequent in Light of Recent Findings

On October 20, 2017, the Department of Homeland Security ("DHS") Office of Inspector General ("OIG") submitted a report summarizing its audit of USCIS's Administrative Site Visit and Verification Program ("ASVVP"), concluding that "USCIS site visits provide minimal assurance that H-1B visa participants are compliant and not engaged in fraudulent activity."

The report found that USCIS's ASVVP program had multiple shortfalls related to the limited number of site visits conducted, a lack of training, and a failure by inspectors to take proper action in instances where noncompliance is detected. The report further outlined a lack of agency tracking of visits, associated costs, and outcomes.

Among the DHS OIG recommendations, which USCIS “concurred with . . . and has begun corrective actions to address,” are that USCIS should:

1. Enhance tracking of H-1B site visit activity, including tracking of targeted site visits and program costs, as well as analysis of adjudicative actions resulting from the site visits. The report said that USCIS should then leverage this data to develop performance measures to assess the effectiveness of ASVVP and assist with oversight improvements.
2. Further identify data and assessments obtained through ASVVP post-adjudication and implement measures to systematically share this information with external stakeholders.
3. Assess ASVVP to determine the best allocation of resources, including adjustments to the number of site visits per year, random sampling procedures, and the time and effort spent on each site visit. To ensure consistent approaches and documentation for site visits, the report recommended that the assessment also should identify policies, procedures, and training requiring an update. The report also recommended developing a career path for site visit officers who wish to remain in investigatory positions.
4. Develop comprehensive policies across USCIS to ensure adjudicative action is prioritized on fraudulent or noncompliant immigration benefits identified by the H-1B ASVVP and targeted site visits.

As a result of the recommendations, site visits will be prioritized, with a more results-oriented and data-driven approach to the ASVVP program.

Asia

Australia

New Eligibility Criteria for Australian Skilled Visa Programs to Be Implemented March 1, 2018

As Australia winds down its Subclass 457 visa program, the government has announced its intent to introduce more stringent eligibility criteria for its Employer Nomination Scheme and Regional Sponsored Migration Scheme visas. In addition, transitional arrangements will be made and “grandfather” provisions will be applied to foreign workers holding Subclass 457 visas on or before April 18, 2017 pursuant to the Temporary Residence Transition Stream. In particular, the following eligibility criteria will remain unchanged:

- The eligible occupations will remain unchanged as long as the foreign worker continues to work in the same position of the same employer as when the prior Subclass 457 visa was issued;
- The foreign worker must be under 50 years old; and
- The foreign worker will need to have worked for the sponsoring company on a Subclass 457 visa for two years prior to filing the application.

Effective March 1, 2018, the following changes will be introduced to the Regional Sponsored Migration Scheme and Employer Nomination Scheme visas:

- Foreign workers must have at least three years of prior work experience relevant to the position they are being sponsored for;
- Employers with annual income less than AUD 10 million will need to pay an AUD 3,000 training levy while employers with annual income over AUD 10 million will need to pay an AUD 5,000 training levy;
- Employers must pay the Australian market wage rate and meet the Temporary Skilled Migration Income threshold of AUD 53,900;
- Foreign workers will be eligible for permanent residency after three years of continual residence in Australia;
- Foreign workers must be no more than 45 years old at the time the application is filed.

These changes may limit a company's ability to sponsor certain skilled workers and will increase the costs of sponsorship.

Singapore

Ministry of Manpower Now Requesting Details about Employer Recruitment Practices

Recently, the Ministry of Manpower introduced changes to the online Employment Pass application without providing prior notice. In line with the Fair Consideration Framework, which aims to build a Singaporean work core to be supplemented by foreign expertise, the new changes, which include requesting information about an employer's specific recruitment practices, will enable the Ministry of Manpower and the Tripartite Alliance for Fair and Progressive Employment Practices to assess efforts made by local employers to open available jobs to Singaporeans and to consider local talent before resorting to foreign talent. The information collected will be used by the government to better understand the profile of the local workforce, identify the nature of the jobs that are in demand, and identify skills gaps in the local workforce that need to be addressed. Going forward, human resources professionals must be prepared to implement procedures to manage, track, and document job applications received, interviews conducted, and the reasons for hiring a foreign candidate rather than a local worker in order to use the Employment Pass application.

Turkey

Turkey and United States Partially Resume Non-Immigrant Visa Processing

Several weeks ago, the Turkish and US governments abruptly suspended visa services for Turkish citizens travelling to the United States and US citizens travelling to Turkey. The US Mission in Turkey has since confirmed that it has now resumed visa processing on a limited basis. Turkish citizens with valid non-immigrant visas may continue to travel to the United States; individuals who require a visa prior to travelling to the United States are encouraged to apply for a non-immigrant visa at a consular post outside of Turkey. Although the US Mission in Turkey is issuing visas, there are a reduced number of visa interview appointments available, resulting in lengthy delays. Similarly, the Turkish Embassy has confirmed that it is issuing temporary visas at its consular posts in the United States on a limited basis. It is unclear when normal visa processing will resume for either country.

Europe

Italy

Italy Approves Family-Based Residence Permits for Cohabiting Partners

On November 8, 2017, the Italian Council of State approved a measure allowing foreign partners cohabitating with Italian citizens to be eligible for a residence permit for family reasons. This benefit was extended to unmarried but cohabitating couples based on a broad interpretation of Law No. 76/2016, which introduced same-sex civil unions and extended immigration benefits to foreign nationals in a civil union with an Italian citizen. Under the same law, cohabitating partners may legally register their cohabitation through a cohabitation contract. As an extension of that law, these couples are now afforded the same immigration benefits as lawfully married couples.

United Kingdom

United Kingdom Provides Guidance on Proposed Post-Brexit Immigration Rights and Procedures

The UK government has provided a paper to the European Commission providing further clarity on the status and rights of EU citizens residing in the United Kingdom after it formally withdraws from the European Union, which is anticipated to occur in/around March 2019. The UK government has confirmed that it will continue to process applications for settled status (permanent residency) for EU

citizens applying within a specific timeframe (expected to be within a two year implementation period) who can demonstrate they were lawfully present in the United Kingdom before a specified date (yet to be determined) and resided in the United Kingdom for a continuous period of five years as a worker, self-employed person, student, self-sufficient person, or family member thereof. While the government is promising ample time for EU citizens to file their applications, it is also proposing to establish a process whereby EU citizens can file their applications prior to the date that the United Kingdom formally leaves the European Union so as to avoid backlogs and lengthy processing times.

Applicants who are not able to evidence five years' continuous residence but who can evidence that they were resident before the specified date will be given temporary status. This will enable them to remain in the United Kingdom and apply for settled status once they meet the five years' continuous residence eligibility requirement.

With regard to international travel, the UK government confirms that during the implementation period following the date that the United Kingdom departs the European Union, EU citizens will continue to benefit from freedom of entry at the UK ports in line with pre-Brexit admission processes. However, a new registration system will be introduced to facilitate entry into the country.

The United Kingdom has yet to establish a cut-off date to be used for determining eligibility for settled status.

For more information about the matters raised, please contact [Elizabeth Espín Stern](#), [Paul Virtue](#), [Grace Shie](#), [Paul Sarauskas](#) or [Lisa J. Pino](#).

Learn more about our [Global Mobility & Migration](#) and [Employment & Benefits](#) practices.

Visit us at [mayerbrown.com](https://www.mayerbrown.com).