



Global Directions

Mobility Trends in August 2019

Canada

Intra-Company Transfer Rules Updated

Immigration, Refugees and Citizenship Canada (IRCC) recently provided guidance to its field officers on eligibility criteria for Intra-Company Transfer (ICT) work permits. The guidance pertains to the legal bases for ICT applications, recapturing time to extend status, startup enterprises, and using an ICT to work on short-term projects. The updates are as follows:

- **Regulatory-Based vs. FTA Intra-Company Transfer Applications: ICT applications** can be processed under general immigration regulations, and some are processed under applicable Free Trade Agreements (FTAs) including NAFTA, the Canada-European Union Free Trade Agreement (CETA), and the Comprehensive and Progressive Free Trade Agreement (CPTPP). The terms of an ICT work permit issued pursuant to a particular free trade agreement may not necessarily align with the general provisions of the ICT work permit category. For example, ICT work permits issued pursuant to the Canada-Peru Free Trade Agreement allows for ICTs after only six months of employment with a foreign affiliate, and it also allows for consideration of Peruvian permanent residents (rather than on the basis of Peruvian citizenship).
- **Recapture of Time:** ICTs are issued for a maximum of five years for specialized workers and seven years for managerial workers. Time beyond the statutory limit may be recaptured if evidence is presented that part of the time was spent not working. IRCC's new guidance now states that recapture will not be considered for any time period of less than 30 consecutive days.
- **Startups:** ICTs are typically granted for companies that have an established business in Canada. ICTs can be granted for startup enterprises, provided adequate documentation and information are submitted. Where the transferee will be working in a specialized position, the business must already have a physical premises in Canada. However, allowance is made for managerial-level employees who may be coming to Canada to start a business operation and therefore may be tasked with finding premises. In addition, the transfer of executives/managers must be supported by evidence that the business is large enough to support such functions. Individuals who meet the criteria for a specialized knowledge worker must be directed by management at the Canadian operation. Initial work permits for startups are granted for one year. To be eligible for an extension, the company must demonstrate that it has engaged in the continuous provision of goods or services for the prior year and that the new office has been staffed.
- **Multiple Short-Term Projects/"Parachuting":** IRCC has indicated that a foreign company with a project or projects in Canada may be issued an ICT work permit (using the Canadian operation) for up to one year. Previously, IRCC indicated that foreign companies with Canadian clients could not use their Canadian affiliate companies (that are otherwise uninvolved in the situation) as vehicles simply to allow the foreign companies' workers to "parachute" into Canada to carry out their duties.

United States

Visa Applicants Required to Disclose Social Media Identifiers

The Department of State ("DOS" or "Department") recently [updated its visa application forms](#) to require persons seeking US visas to disclose their social media identifiers. The DOS defines "identifier" to include any name used on a social media platform such as Facebook, Instagram, or Twitter. [The Department's FAQs](#) state that the information will be used to strengthen the process for vetting applicants and confirming their identity. Furthermore, the FAQs state that applicants' social media information will be protected by the same confidentiality guarantees and safeguards that protect other personal information disclosed in the visa application process, and the Department has stated that social media information will not be used to profile individuals by race or religion.

Agreement Reached on Proposed Immigration Legislation in the Senate

On June 17, 2019, amendments were proposed to the Fairness for High-Skilled Immigrants Act of 2019 (S. 386) to address longstanding concerns with the H-1B visa program. The amendments would increase the per-country cap on family-based immigrant visas from 7 percent of the total number of such visas available that year to 15 percent, eliminating the 7 percent cap for employment-based immigrant visas altogether. The bill would also remove an offset that has reduced the number of visas for individuals from China. The bill also establishes transition rules for employment-based visas from FY2020-FY2022 by reserving a percentage of EB-2 and EB-3 visas for individuals not from the two countries with the largest number of recipients of these visas, namely India and China. Of the unreserved visas, not more than 85 percent shall be allotted to immigrants from any single country.

The bill also proposed new H-1B measures:

- Department of Labor (DOL) website posting requirement: requires that employers post information about jobs being offered to H-1B nonimmigrants on the DOL website for no less than 30 calendar days before a company may file an LCA for an H-1B worker.
- New application requirement: prohibits employers from stating a preference for H-1B workers in job advertisements.
- W-2 reporting to DOL: provides DOL with the authority to obtain an H-1B employer's W-2 wage and tax statements for the H-1B nonimmigrants it employs.
- LCA fees: authorizes DOL to collect a fee for filing an LCA to cover "the average paperwork processing costs and other administrative costs."
- Elimination of B-1 in lieu of H-1B: eliminates the State Department practice of issuing B-1 in lieu of H-1B visas to employees of overseas companies to work in the United States on short-term projects. The practice has long been criticized by Senator Charles Grassley as a way to avoid H-1B numerical caps and the H-1B LCA obligations.
- Whistleblower protections: strengthens whistleblower protections for employees who raise concerns about their employer's actions regarding LCA compliance.
- Information sharing between US Citizenship and Immigration Services (USCIS) and DOL: Allows for the free flow of information regarding employer noncompliance.
- LCA review: expands DOL authority for review of LCAs beyond ensuring completeness and no obvious inaccuracies to include scrutiny of clear indicators of fraud or misrepresentation of material facts.
- Clarification on prevailing wage requirements: clarifies employers' existing obligation to pay H-1B workers the greater of the actual wages of employees with substantially the same duties and responsibilities or the prevailing wage, calculated with reference to the geographic area of employment.
- LCA audits and surveys: permits annual compliance audits of H-1B employers and mandates same for H-1B-dependent employers if they committed a willful violation of LCA requirements in the prior year.
- LCA investigations: expands DOL's investigative authority for LCA violations by allowing investigations to be based on anonymous complaints; eliminating the arbitrary 60-day deadline on investigations; and permitting investigations for general compliance with LCA requirements, not limited to willful violations.

At present, it is not clear whether or when the Senate Judiciary Committee will consider the bill.

Europe

Switzerland

Romanian and Bulgarian Citizens Granted Full Freedom of Movement

The Swiss Federal Council recently approved an amendment to the ordinance on the introduction of the Free Movement of Persons (VEP) to end permit quotas for nationals from Romania and Bulgaria effective June 1,

2019. Nationals from Romania and Bulgaria will enjoy full freedom of movement for immigration to Switzerland. This enables them to enter the country and register with the purpose of pursuing local employment (either as a job-seeker showing financial means to sustain livelihood during the search or as an employee of a company based in Switzerland).

The protocol on the extension of the Free Movement of Persons with regards to nationals from Romania and Bulgaria has been in force since June 1, 2009. A transition period of 10 years was part of this agreement. The Swiss Federal Council in 2017 and 2018 made use of its ability to invoke a safeguard clause to partially limit the immigration of workers from Romania and Bulgaria in order to steady the immigration. The full freedom of movement for Romanian and Bulgarian citizens into Switzerland became effective June 1, 2019.

Middle East

Saudi Arabia

Permanent Residency Introduced for Expats

The Kingdom of Saudi Arabia recently launched its first permanent residency program for certain expatriates, allowing them to reside in the country with their families without a Saudi sponsor. Applications can be made through the Premium Residency Card (PRC) online application platform. This idea was first announced in 2016 by Crown Prince Mohammed bin Salman but was only approved by the Shura Council in May 2019, with services starting in June.

Expats are normally sponsored by a Saudi employer and require visas to enter and leave the country, making this a landmark decision, considering the country is home to over 10 million expats.

There are two types of residency offered: a permanent residency for a fee of SAR 800,000 (\$213,000) and a renewable temporary residency for an annual fee of SAR 100,000 (\$27,000). The program requires applicants to be at least 21 years old, submit a valid passport, prove financial stability, have a clean criminal record, and provide evidence of medical reports proving they are healthy. This program is expected to generate around SAR 37 billion (\$10 billion) in annual revenue by 2020.

The rights and benefits enjoyed by PRC holders include traveling in and out of the Kingdom without restrictions and a separate visa, sponsoring residence and visitor visas for their families, recruiting domestic workers from abroad and sponsoring employment visas, owning real estate and private means of transportation, working in private sector companies, and changing jobs. However, they are not subject to free movement within the Gulf Cooperation Council (GCC) and are prohibited from working in positions that are limited to Saudi nationals.

The new residency program makes it clear that the Kingdom aims to attract long-term foreign investment to help diversify its economy in response to fluctuating oil prices. The Kingdom aims to increase domestic spending by attracting wealthy and high-skilled expats and entrepreneurs, who will play an active role in supporting the Kingdom's economy and strengthening state revenue.

United Arab Emirates

First Permanent Residence Program Unveiled

The United Arab Emirates (UAE) recently introduced its new Golden Card permanent residence program to attract foreign investors and exceptional talent, including top doctors, engineers, scientists, and researchers and high-performing students. Permanent residence would also be offered to spouses and children of eligible applicants.

The Golden Card program is developed out of a program implemented last year to provide long-term visas to qualifying investors, specialists, and students. The initial grants of permanent residency will likely be for business people and students who are already in the UAE and who will be given the opportunity to change their status and obtain a Golden Card.

UAE officials have confirmed that the first group of 6,800 investors from over 70 countries have been offered permanent residency pursuant to the Golden Card program.