



# GLOBAL IMMIGRATION UPDATE

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## AUSTRALIA

*The Australian government has announced four immigration-related initiatives.*

On May 10, 2011, the Australian government announced four main immigration-related initiatives as part of Budget FY 2011–12. The changes are in response to the tightening labor market in Australia with unemployment forecasted to fall to 4.75% in 2011-2012.

The demand-driven sponsored employee 457 visa program will receive additional staff and a new processing site in Brisbane. Together, these initiatives should see processing times halve to 2 weeks for decision-ready applications.

In response to the need for labor in regional Australia, the government has announced the introduction of Regional Migration Agreements (RMAs). These will bring together employers, local and state/territory governments, and unions to cooperate on addressing local labor needs. RMAs will be custom-designed, geographically based migration arrangements that set out the occupations and numbers of overseas workers needed in the area. Concessional access to semi-skilled overseas workers will be negotiated where there is a demonstrable and critical need.

As with the current arrangements for Labour Agreements, each RMA will be negotiated between the government and representatives of the local area. Individual local employers will then be able to directly sponsor workers under the terms of the umbrella RMA. The agreements will allow employers to use overseas workers where local labor cannot be sourced. By utilizing RMAs, regional employers will be able to gain streamlined access to temporary and permanent overseas workers if they can demonstrate a genuine need while at the same time ensuring that training initiatives for Australians are in place.

It is expected that negotiations for individual RMAs will commence in 2012.

In addition, the government has confirmed new Enterprise Migration Agreements (EMAs) that will allow major resource projects to gain access to overseas labor for genuine skills vacancies that cannot be filled from the Australian labor market. Forecasted to streamline negotiation arrangements for access to overseas workers and deliver faster visa processing times, EMAs will be custom-designed, project-wide migration arrangements uniquely suited to the resources sector, ensuring that skills shortages do not create constraints on major projects and jeopardize Australian jobs. This recognizes the need for labor to support the A\$380 billion of investments in the pipeline for resources projects.

To be approved for an EMA, a projects must develop a comprehensive training plan, demonstrating how the project will invest in the up-skilling of Australians to meet future skills needs in the resources sector by setting measurable targets that develop skills in occupations where there are known or anticipated shortages. EMAs will be available to projects with a capital expenditure of A\$2 billion or more and a peak workforce of 1,500 workers. The announcement follows the government's acceptance in March of all 31 recommendations of the National Resources Sector Employment Taskforce - which included the introduction of EMAs - to help address the need for more than 77,000 skilled workers on major resources projects by 2015.

Negotiated by the government with the project owner and acting as an umbrella arrangement for the project, an EMA will set the terms by which overseas workers will be engaged on the project, as well as outlining training commitments that must be met by the project. The terms set out in each EMA will include the occupations, qualifications, English language skills, wages, and conditions of the foreign workers on the project. Subcontracting employers, with the endorsement of the EMA holder, will be able to sign onto Labour Agreements under the terms of

the EMA, ensuring that responsibility for sponsorship obligations rests with the direct employer of the overseas worker.

Existing migration arrangements will continue to be available to these projects as well as to resource projects that do not meet these thresholds, including expedited 5-day processing for decision-ready 457 visa applications.

EMAs will take a project-wide approach to meeting skill needs. Rather than each subcontractor having to negotiate their own Labour Agreement, the bulk of negotiation will occur with the project owner. This means that project owners can plan their workforce needs from the outset, and there will be a straightforward process for subcontractors to sign up for an individual Labour Agreement.

The Department of Immigration and Citizenship has indicated that it plans to negotiate the agreements within 3 months of the date a project owner submits a complete request for an EMA. One of the advantages of an EMA is that occupations not currently eligible for a sponsored employee 457 visa (typically semi-skilled occupations) can be sponsored to a capped level, provided the project can justify a genuine need that cannot be met by the Australian labor market.

And finally, the government has indicated its intention to implement a new Skilled Migrant Selection Model in July 2012 based on an Expression of Interest (EOI) and invitation to apply for those applicants applying under the points-tested visa pathways. Key features of the Model are settled, although the proposal is still in an early stage of development with further details to be released.

The new Model will introduce a two-stage process: first, prospective applicants submit claims for skilled migration through an online EOI and subsequently may be invited to make a visa application. This is a significant change from the current situation because applicants for independent or state/territory-sponsored migration will be required to receive an invitation in order to file a visa application. Once applicants are invited, the Model will ensure a match between the number of applicants and the number of available program places, resulting in streamlined processing times.

A key benefit of the Model is the ability to address regional skill shortages because the Model allows prospective migrants to signal their willingness to live and work in regional Australia. The Model will connect state/territory governments and employers with potential skilled workers through a central database of prospective skilled migrants. This will help state/territory governments to maximize the benefits to be derived from their state/territory Migration Plans. Submitting an EOI allows employers to view applicants' details and contact prospective applicants to discuss sponsorship opportunities. It also allows prospective migrants who are sponsored on a temporary basis to be invited to apply for either independent migration or state/territory-sponsored migration, if eligible.

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## **BRAZIL**

*Normative Resolution #94, regarding professional exchange programs, was published in April.*

Recently graduated college or university students may wish to come to Brazil to gain knowledge necessary for progressing in their careers, or for cultural exchange, tourism, or professional experience. A new kind of visa, valid for one year and not extendable, is now available to foreigners, students, or recent graduates coming to Brazil to participate in professional exchange programs.

Normative Resolution #94, which sets forth the new visa's requirements, was published in the Official Gazette of April 14, 2011, as a new resolution of the National Immigration Council. For purposes of this resolution, a professional exchange includes learning as part of an international labor experience, which is performed in a work environment that promotes the exchange of knowledge and cultural professional experience.

To grant a work permit, the Ministry of Labor requires (i) proof of enrollment in graduation or post-graduation courses valid for less than one year, or a graduation certificate; (ii) a temporary part-time or full-time work contract; and (iii) a Commitment Term between the foreigner and the employer, with the participation of a Brazilian exchange entity (an entity responsible for the assistance of the trainee while in Brazil), which states the terms of the exchange.

The Ministry of Labor may reject the application (a) if there is any evidence of the company's interest in substituting foreign professionals in place of Brazilian manpower; and (b) if it is found that the same treatment is not granted to Brazilian nationals in the country of origin of the applicant.

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## **CANADA**

*Foreign nationals are usually inadmissible to Canada for having criminal records; many do not know that they can also be inadmissible to Canada on health grounds.*

Foreign nationals are usually inadmissible to Canada for having criminal records (including convictions for driving while intoxicated). Many, however, do not know that foreign nationals can also be inadmissible to Canada on health grounds if they are "likely to be a danger to public health or public safety" (very rare) or "might reasonably be expected to cause excessive demand on health or social services."

Approximately 280,000 foreign nationals became Canadian permanent residents in 2010, each of whom was required to undergo a Canadian immigration medical examination before becoming a Canadian permanent resident. About 96,000 foreign students came to Canada and 182,000 foreign workers entered Canada in 2010, many of whom were required to have a medical examination.

Given that Canada has a socialized system of medicine where the provincial governments pay most medical costs, medical inadmissibility can be a real concern for those with health issues who want to immigrate to Canada.

In total, approximately 450,000 Canadian medical examinations are performed each year on foreign nationals. Of those medical examinations, less than one percent of the foreign nationals (and their family members) were held to be inadmissible on health grounds for a health condition that "might reasonably be expected to cause excessive demand on health or social services."

In 2005, the Supreme Court of Canada held that the personal circumstances of each foreign national seeking to immigrate to Canada should be considered by the Canadian visa office and an individualized assessment undertaken when deciding whether there is likely to be excessive demand on social services.

As the case law is evolving in this area, great care must be taken by foreign nationals interested in coming to Canada who suffer from significant medical problems.

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## NETHERLANDS

*Compliance rules for the Knowledge Migrant Scheme may be tightened in June.*

The Ministers of Immigration and Asylum and Social Affairs have proposed that the Knowledge Migrant Scheme (KMR) be tightened sometime in June 2011. The proposed measures, as stated in their letter sent April 11, 2011, to the Dutch parliament, include:

- The salary of a knowledge migrant must be paid in the Netherlands by the Dutch branch office if the stay of the knowledge migrant in the Netherlands is longer than six months.
- Market conformity of the salary will be assessed.
- The salary must be paid every four weeks or every month.
- The salary must be in conformity with the usual hours worked per week.
- The employer must, upon request of the Immigration Service or Labor Inspection, document that the salary is being paid.
- The Immigration Service will check via the computer network with the Labor Directorate whether the salary is actually being paid.
- The gross annual salary for social security purposes will be used as a basis to assess whether the salary threshold is being met.

It remains to be seen whether all these measures will actually be put into effect in June. The market conformity of the salary of the knowledge migrant will need legislation, not just policy rules by the Ministers themselves, before it can enter into force.

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### **ABIL Webinar Series: U.S. Investment Visas and Green Cards for Foreign Nationals**

Many foreign entrepreneurs want to start businesses or invest in the United States. Other wealthy individuals want green cards to live in the United States, but may be hesitant because of real or perceived immigration obstacles. Real estate developers and companies seeking capital for development projects are increasingly looking for EB-5 capital from foreign investors. Several visa options exist, but each has advantages, disadvantages, and limits.

A three-part webinar series, presented by the Alliance of Business Immigration Lawyers (ABIL) and co-sponsored by Invest In the USA, the association of EB-5 regional centers, helps guide individual investors and others, as well as U.S. companies that want to attract foreign investors and wealthy individuals. The intended audience includes individual investors; potential and actual EB-5 regional centers; attorneys and advisors; real estate developers; and companies seeking capital for development projects. Each 90-minute webinar in the series explains immigration options and offers practical real-world strategies:

- Session 1: Visa options for individual investors: E and L nonimmigrant visas; EB-5 green cards through direct investments or regional centers, was held on April 13. (A recording of the webinar is available for purchase.) Moderated by Bernard P. Wolfsdorf. Presenters: Kehrela Hodkinson, Mark Ivener, and Stephen Yale-Loehr.
- Session 2: EB-5 regional center applications and project pre-approval petitions, to be held July 6 at 3 p.m. (ET). Moderated by Laura Danielson. Presenters: Bryan Funai, H. Ronald Klasko, and Steve Trow.

- Session 3: How to successfully navigate the back end of the EB-5 process for both individual investors and regional centers, to be held August 16 at 3 p.m. (ET). Moderated by Steve Clark. Presenters: H. Ronald Klasko, Robert Loughran, and Stephen Yale-Loehr.

All participants will receive a file with the PowerPoint presentation, relevant articles, and resources before each session, as well as a recording of the webinar. The cost is \$89 for an individual session or \$249 for all three sessions, live or recorded. To register, go to: [https://securec9.ezhostingserver.com/abil-com/abil\\_webinar\\_signup.cfm](https://securec9.ezhostingserver.com/abil-com/abil_webinar_signup.cfm). For more information, contact Lauren Anderson at [lauren@abil.com](mailto:lauren@abil.com) or visit <http://abil.com>.

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### **ABIL Global Immigration Compliance Webinar**

On June 1, 2011, at 11 a.m. EDT, ABIL will present a webinar on Global Immigration Compliance. In the current global business environment, the world is increasingly connected and companies are sending their employees across country boundaries more than ever. There are various issues to take into account when doing business overseas. Multiple countries have tightened their regulations for foreign employees and business travel, and it is crucial to be aware of any implications from the beginning.

This webinar will help guide professionals involved in global mobility to be assured of compliance when sending employees to another country. Some of the questions that this webinar will answer are:

- What does an employer need to do in each country before hiring a worker – both domestic and foreign national?
- What are the penalties if an employer does not comply, or hires an undocumented worker?
- Are there any verification procedures or programs to provide incentives for compliance?
- What are the penalties, if any, for non-compliance?

Presenters include Robert Loughran, U.S. (moderator); Jacqueline Bart, Canada; Bernard Caris, Belgium; Laura Devine, United Kingdom; and Gunther Mävers, Germany.

All participants will receive a file with the PowerPoint presentation, relevant articles and resources, and a recording of the webinar. The cost is \$40 USD to participate live or receive the recorded version of the webinar. For more information or to register, see [http://abil.com/webinar/abil\\_global\\_immigration\\_compliance\\_webinar.cfm](http://abil.com/webinar/abil_global_immigration_compliance_webinar.cfm).

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### **ABIL Global Mobility Conference**

The Alliance of Business Immigration Lawyers' (ABIL) Global Immigration Network presented a Global Mobility Conference in London, England, on Thursday, May 5, 2011, from 2 to 5 pm. This half-day free conference guided professionals involved in global mobility to be better equipped when conducting business transactions in another country. The conference looked at the following areas:

- Compliance related to immigration and tax, as well as criminal liability
- Best practices in global mobility through a case study

- Global mobility trends and hot topics from multiple countries

The conference was presented by ABIL and co-sponsored by Baker Tilly International, a network of accountancy and business advisory firms. For more information, e-mail Lauren Anderson at [lauren@abil.com](mailto:lauren@abil.com).

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## Member News

Avi Gomberg (bio: <http://www.abil.com/lawyers/lawyers-gomberg.cfm?c=CA>) was a moderator/speaker on May 13, 2011, at the Canadian Bar Association Citizenship and Immigration Canada annual immigration conference in Lac Leamy, Québec. The topic of the workshop was medical inadmissibility, and Mr. Gomberg presented with two federal court judges and a Canadian department of justice lawyer.

Marco Mazzeschi (bio: <http://www.abil.com/lawyers/lawyers-mazzeschi.cfm?c=IT>) spoke at the ALLA Rome district chapter in Frankfurt, Germany, on May 13, 2011, about citizenship law issues.

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## About ABIL

*The Alliance of Business Immigration Lawyers (ABIL) has aggressively built its capacity to handle non-U.S. immigration matters and now has a trusted lawyer in nearly every desired location. With a global network of 190 lawyers in over 50 countries, ABIL offers the resources and local legal counsel necessary to place employees in offices throughout the world. All members of the ABIL network have been carefully vetted and evaluated, and all provide centralized, coordinated services and billing when requested. Utilizing ABIL's carefully crafted Service Level Standards, the global immigration applications meet the same standards as ABIL's U.S. applications.*

*The Alliance of Business Immigration Lawyers' Web site is at <http://www.abil.com/>.*

### **Disclaimer/Reminder**

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