

# Going Global: Ten Key Considerations for Effective Strategic Planning in Relocating Personnel

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When a U.S. company "goes global" by entering overseas markets, it needs to take many factors into consideration. Not the least of these is immigration compliance. As U.S. citizens, we are often unaware that significant visa considerations exist for personnel being relocated abroad, particularly since we are so accustomed to being able to travel freely throughout the world. U.S. citizens are allowed to enter many countries as visitors without visas, and when short-term visas are required, they are generally quite easy to obtain.

The scenario changes when someone enters another country for the purpose of working. Most countries, including the United States, will not allow individuals to enter and work without getting further visas or permits, some of which take time to acquire. It is, therefore, essential that a business include immigration in the list of considerations to think about well in advance of sending personnel abroad. Here are the top ten critical factors your company should review in developing its immigration strategy.

## 1. Type of Assignment

A very critical threshold question is whether an employee will make a simple, short-term business visit or enter a country on a work assignment that requires a work permit and/or a residence permit. Each nation's immigration laws are different, so it is important to figure out the specific requirements in the country where the employee is being sent. An employer must consider whether the immigration laws require obtaining a work permit in advance. What about a permit to reside in that country? Will the employee be allowed to enter as a business visitor and then switch to a work permit or is it necessary to acquire the specific visa well in advance of entry?

It is relatively simple in most instances to acquire a business visitor visa, and some countries do not even require them. Companies accustomed to sending employees abroad as simple "business visitors" for the purpose of attending meetings and negotiating contracts are often lulled into the feeling that immigration issues are nonexistent. They might think it is acceptable to send their employees on short- or long-term assignments as business visitors, when in fact they are really engaging in gainful employment. These employees are what people in the global immigration field call "stealth expats," meaning they are in a foreign country operating beneath the radar. They are essentially breaking the immigration laws in another country by posing as business visitors when they really should have visas, work permits, or residence permits. Consequences can range from expulsion from the country, debarment from further immigration benefits, and significant monetary penalties. In certain countries, including the United States, physical detention often occurs before a person is deported. None of this is good for a company trying to do business abroad, to say nothing of employee morale!

## 2. Credentials and Experience

When an employer realizes an employment-based visa or work permit is required to send an employee abroad, the next step is to figure out the minimum requirements for that visa. Although each country has different immigration laws, many share some basic similarities. Since most countries do not want to allow entry to foreign workers who will compete in the marketplace with domestic workers, they have often devised an immigration scheme that differentiates workers based on the following questions:

- Are the workers essential to the development of the foreign company?
- Do they have important skills that might be in short supply?
- Are the workers high-level managers?
- Are there equally qualified workers who can be hired locally?

In many instances, the U.S. worker will be granted a foreign work visa if he or she has proven specialized skills. To do that, the employer may need to document that the employee has a related university degree or a specific number of years of experience and training in the field. In some instances, an employee must be with the company in the United States for a certain period of time before being allowed to transfer abroad. Therefore, an employer must assess the credentials of its U.S. workers before finalizing plans to send them to another country.

## 3. Job Duties

Unwary employees are often tripped up—and can even be sent back to the United States—when immigration authorities question them about their duties, at entry. The underlying basis for these disasters is that the immigration authorities don't understand in detail what the foreign workers will be doing, or find that their duties as described are not in compliance with the country's regulations. Often the laws are very specific as to which duties are acceptable and which are not:

- Should the job duties be managerial or professional?
- Do the duties establish that a sufficient level of skill is required?
- Is it clear from the duties that the job cannot be easily performed by a local hire?

Some countries require that the person receiving the work permit be registered and working as the company's agent, and the person's duties must reflect that.

Before describing an employee's duties in an application, it is essential to understand the foreign immigration laws, so the duties can be drafted in a way that is favorable to obtaining a visa. This does not mean that duties should ever be misrepresented, but that critical duties are emphasized to parallel those regulations. Employees being sent abroad should also be carefully briefed so that they understand exactly what was in their immigration applications and what it is they will be doing in the foreign offices to which they are being sent.

## 4: Business Structure of Foreign Office

Some foreign immigration laws require that a foreign worker be employed in a business entity that properly qualifies as an affiliate or branch office of the U.S. parent company. This means that even before taking a look at the credentials of the employees being sent abroad, there may be key considerations as to the business structure. For example, a joint venture may qualify for immigration purposes only if the majority ownership is in the hands of U.S. partners. Legal registration in the foreign country may be required. Loose affiliations with local businesses may not provide sufficient structure to allow for the hiring of U.S. workers. On the other hand, some countries allow highly skilled workers to self-petition, which means that they can go abroad to a location where the U.S. does not yet have a formal business entity.

Understanding the basics of the foreign immigration laws as they relate to business structure is critical to the successful relocation of U.S. workers and requires planning at the very earliest stages. Setting up the wrong business entity can have costly consequences down the road. It can be a disaster after carefully and successfully navigating foreign laws to set up a business entity only to discover that key personnel cannot be transferred to work assignments.

## 5. Grounds of Inadmissibility

Just as in the United States, many countries prohibit people from obtaining work visas if they have criminal records or histories. Sometimes even very minor crimes or those committed long ago can preclude entry, including convictions for driving while intoxicated. Although waivers may still allow entry, it is never good to be surprised by this information at the last minute. In some instances the visas will have already been obtained and the employee will have traveled abroad only to be refused admission and turned around on arrival.

Aside from criminal histories, individuals may be turned away from another country for other reasons. They may have run afoul of the country's immigration laws on a prior entry, perhaps by being a "stealth expat." Visa or entry refusal could also relate to political history, particularly if an employee has ever gone public with political or religious views that are at odds with those in the regime they seek to enter. Finally, there are medical-related grounds of inadmissibility, for example, having a serious disease such as HIV or tuberculosis. Employers must anticipate potential problems well in advance and ask the right questions of their employees before initiating the visa application process.

## **6. Entry Strategy and Timing**

After an employer figures out all the immigration regulations related to obtaining visas for relocating global employees, it also needs to figure out the logistics. Almost as critical as getting the right visa is getting it on time. Sometimes the process takes a number of weeks or even months. Some countries require the visa to be obtained in the United States before a worker makes an initial entry. Others allow an individual to travel into the country first as a business visitor. Some may even *require* physical presence to acquire work or residence status. Because business visitors cannot engage in any gainful employment, it is critical to anticipate the process well in advance, learn the procedures, and acquire the necessary visas early enough so employees aren't stuck in a foreign country wasting time and waiting for permission to work.

## **7. Spouses and Dependents**

Depending on the work-visa category, most countries allow foreign workers to bring their spouses and children, and some even allow significant others. It is important to know the procedures for bringing them and whether the dependents need to enter with the worker or can follow to join. Children "*age out*" (meaning they no longer qualify after a certain age) in most countries and are no longer considered dependents, so it is essential to learn in advance of potential issues regarding a child being able to reside abroad with the family. Also, critical to many couples is whether a spouse is eligible for employment authorization abroad. Determining these issues in advance will help make the transition for a relocating family much smoother and will avert many potential disasters.

## **8. Household Goods and Immigration Logistics**

Although shipping employees' household goods is normally handled separately from their immigration matters, it can be important to consider the logistics of the two. In some countries, household goods cannot be retrieved at a port until certain work and/or residence permits have been granted. The last thing a company wants is an employee to be stuck in another country unable to retrieve household goods, or worse yet, facing the prospect of the goods being shipped back to the United States, since many ports will not hold the goods for long. A company should figure out the timing and logistics in advance and acquire the necessary immigration permits *before* the goods are received.

## **9. Third-Country Transfers**

Sometimes U.S. employers send abroad employees who are not U.S. citizens. This is significant because often immigration laws differ depending on nationalities. In some instances, the laws may be more favorable for others, for example, European Union citizens, than for U.S. citizens, but in other instances, further restrictions apply. Therefore, it is essential to take employees' nationalities into consideration in acquiring foreign visas.

A further issue is that U.S. employers often send abroad employees who are not U.S. citizens but have acquired U.S. lawful permanent residence. Permanent residence will be lost, however, when an individual ceases to live in the United States permanently. Since acquiring lawful permanent residence may typically take many years to acquire, most employees will not want to give it up lightly. U.S. lawful permanent residents temporarily residing abroad for work purposes can employ strategies to maintain their important status. Often the situation can be resolved by filing an application for something called a "re-entry permit" prior to departing the United States. If the employee has already departed to work abroad, however, it may be too late.

## **10. Duration and Renewals**

Each country has its own laws relating to how long foreign employees can remain and work. Often an initial period can be renewed. Some visas can be renewed indefinitely. Others run out after a finite period, meaning the employee cannot continue working in the country and will have to return home unless a different strategy is employed. Knowing the requirements for renewal is critical, but so is tracking the timing so a visa expiration doesn't sneak up so quickly, rendering the employee out of status in the foreign country or forcing to return to the United States during the renewal process.

## **Takeaway**

As you can see, global companies must make many critical immigration-related considerations when sending their employees to work in other countries. Successfully navigating this process will make the difference between happy and disgruntled (or even furious) employees. It will also ensure that laws are not broken when your company seeks to do business in a new country. Starting off on the wrong footing in a new country is not what any company wants to happen. Therefore it is essential that companies carefully factor immigration into the mix when planning their global strategies.