

## Management Alert

# Changes to India's Visa Structure

India's Ministry of Home Affairs recently released guidance on permissible uses of Indian Business Visas ("B" visas) that significantly changes the administrative hurdles for employers deploying workers to India for short-term assignments. Additionally, the Indian government has announced a new quota system for companies employing foreign nationals in India. These policy changes reflect the Indian government's concerns about protecting the local labor force and ensuring tax compliance. This alert describes the changes and provides suggested actions for employers doing business in India.

### *Background*

In the past, B visas were used by companies wishing to transfer foreign nationals to India for short-term assignments of up to 180 days (or more in some cases), even when those assignments involved work in India.

On August 20, 2009, the Indian Ministry of Commerce and Industry, Department of Industrial Policy and Promotion issued a letter providing clarification on visa requirements for foreign nationals seeking to enter India in connection with projects or specific contracts. Thereafter on September 25, 2009, the Ministry of Home Affairs issued responses to Frequently Asked Questions. These pronouncements greatly restrict permissible activities under the B visa program.

### *B Visas*

B visas may be issued for up to 5 years and permit multiple entries. Based on the new guidance, to qualify for a B visa, an applicant must be seeking admission to perform one of the following activities:

- To establish a business venture/company;
- To explore business opportunities;
- To purchase/sell industrial products;
- To attend short-term business meetings;
- To recruit manpower from India;
- To transact business with suppliers/potential suppliers in India; or
- To serve as an expert/specialist providing high level technical guidance in connection with an ongoing project in India.

Applicants planning to engage in activities that fall outside the above will need to apply for an Employment Visa ("E" visa) from outside India. Individuals in possession of B visas whose activities fall outside current permissible B visa activities were directed to depart India by November 30, 2009.

### *E Visas*

All foreign nationals seeking an E visa must now apply in their country of citizenship or in their country of domicile, provided the period of permanent residence of the applicant in that country exceeds two years. E visas are typically granted for up to

one year. One extension may be granted by the Ministry of Home Affairs but subsequent extensions will require additional approvals.

The following classes of applicants are eligible for E visas:

- Skilled and qualified professionals; and
- Senior-level skilled workers or executives/managers.

Foreign nationals who will perform primarily administrative, secretarial or clerical duties are not eligible for E visas. Similarly, foreign nationals seeking to enter India to work in occupations for which there are large numbers of qualified Indian nationals will not be eligible for E visas.

Significantly, the sponsoring employer in India is responsible for the conduct of all E visa holders in India and is charged with ensuring that E visa holders depart India prior to the expiration of their visa status.

### *New Quota System*

The Indian Ministry of Labor and Employment recently announced a new quota system. Effective immediately, the Indian government will allow employers to hire foreign workers as long as the total foreign workforce in India does not exceed 1% of the total workforce or 20 foreign workers in total. Once this quota has been reached, employers will be unable to sponsor visas for additional foreign workers.

### *Conclusion*

Companies that currently employ foreign workers in India should review the visa status of each individual and assess whether the employee holds the appropriate visa. Additionally, employers should determine whether their foreign work force in India exceeds the newly imposed quota. Moreover, employers should ensure that they are monitoring the visa status and expiration dates associated with all employees traveling to or located in India to ensure that these workers depart before the expiration of their status. The proposed activities of future dispatchees to India must be thoroughly reviewed in light of the Indian government's guidance, and employers should build in sufficient time for employees to complete the visa application process, including trips to the applicant's home country for visa processing, if necessary.

*For more information about the Indian visa process, please contact the Seyfarth attorney with whom you usually work or any Business Immigration attorney on our web site ([www.seyfarth.com/Immigration](http://www.seyfarth.com/Immigration)).*



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