

# Navigating The Minefield Of Global Immigration

**Over the years, businesses have long discussed the issue around risk and compliance, but what does it really mean? Usually, risk is associated with uncertainty and the potential for loss. In global immigration, risk takes various forms: risk of refusal of an application, denial of entry into a country, loss of business, being found non-compliant, liability for civil and criminal penalties, reputational damage and so forth.**

With immigration being such a people-centric area of law, the fate of individuals and their families often lies in the hands of other individuals – immigration officers, consular officers and decision makers – this in spite of, or perhaps in reliance on, a framework of immigration law and policy that usually governs each jurisdiction. Often, immigration decisions can seem arbitrary, making the task of anticipating outcomes and managing risk more challenging, but is there in fact a discernible trend that underlies these?

Identifying patterns and trends can be a useful first step towards successful risk management. At the same time, a clear understanding of immigration requirements and compliance obligations on a corporate and personal level is key to protecting the business, and its employees, from risk.

Whilst we can never eliminate risk, we can look to identify key areas of risk, putting in place systems to monitor, manage and mitigate these.

Here, we explore immigration risks common to a range of jurisdictions and how these can be managed.

## Business Visitors

Short-term business visitors have long presented an area of risk for businesses. Whilst foreign workers must meet stringent criteria before being granted a work permit, business visas are comparatively easier, quicker and cheaper to obtain. This seemingly unregulated area of immigration can be an attractive option for businesses wishing to send employees for short-term work purposes. However, as the practice of obtaining business visas for work becomes increasingly prevalent, authorities are now more actively policing compliance and

unannounced immigration audits are on the rise. Countries like Russia, Australia and the UK all have an audit system whereby companies must prove they meet the obligations of the immigration rules or suffer penalties and criminal sanctions. In the wake of the recent attacks in Paris, France has also tightened their immigration rules and are introducing audits for businesses to ensure they have robust systems to track and monitor their employees.

Usually, the focus will be on directly sponsored workers but now, in addition, the authorities have turned their attention to any anomalies that crop up at audit, including agency workers, students and visitors. Employing illegal workers, knowingly or otherwise, is an immigration offence and it is on this basis that a compliance officer can challenge anyone who appears to be working on-site. These individuals can present a grey area for compliance officers and the lack of transparency can create risk for employers, particularly where the activities of business visitors go largely unmonitored and HR are removed from the activity taking place in individual departments, usually overseen by line managers. Yet accountability will still rest with the company that is permitting the illegal work on their site. In this respect, employers should focus on ensuring robust systems are in place with regard to business visitors and monitoring and tracking their activities.

Aside from the obvious risk of individuals working in breach of the conditions of their business visa, there is also the matter of overstayers to consider. Often, individuals may be granted multiple-entry visas and be unaware that there is an additional limit on their stay, which applies to each entry they make into that country. This means that although a visa may be valid for a certain period, the visa holder might be required to exit the country after a specific duration of time, re-entering to “reset” their stay limit. Other limits can be cumulative, where the visa holder may not exceed a certain duration of stay over a stipulated period of time – most will be familiar with the Schengen limit of 90 out of a 180 days. These limits are not always obvious. One

example is where visitors are granted a visa on arrival and the endorsement they receive in their passport does not specify a stay limit, leading to them unintentionally overstaying. Another common area of confusion is visas issued with Islamic dates.

In other situations, compliance may only be monitored by immigration authorities sporadically, leading to a relaxed perception of the rules until the non-compliance is detected by immigration officers and penalties rendered. As an example, in Turkey a similar limit to the Schengen zone applies. Compliance with this rule very much rests on the individual as immigration officers will not always monitor directly. In one case, an individual managed to exit and re-enter Turkey on numerous occasions after exceeding the permissible limit by double. On the last occasion that he tried departing the country, immigration officers picked up on the non-compliance and prohibited him from leaving the country. It was only possible to secure his release after the company paid a large fine. Thereafter, the issue was perpetuated by the fact that he was blacklisted and unable to re-enter the country to conclude crucial business deals, resulting in loss of business and significant inconvenience. The matter was eventually resolved through protracted negotiations with the authorities.

## Reporting Obligations

As many immigration systems move towards online administration, the onus is also shifting to employers to self-regulate, affording greater autonomy to businesses and, correspondingly, increased responsibility for maintaining compliance.

This type of system has been in operation in the UK since late 2008, when the Points Based System first came into being. Sponsors can issue Certificates of Sponsorships (CoS) to prospective hires but the perceived ease with which a CoS can be assigned is a potential liability as errors can be made which are not picked up until extension stage or a compliance audit.

Other countries operating a similar self-certification system include Australia and Canada. For these countries, and in fact employers across the world, it is

important that there is a robust system in place to monitor and track changes to workers' circumstances, reporting to the immigration authorities where significant changes are proposed. A common pitfall is that the changes are approved before being assessed to determine whether a new immigration application may be required. In these circumstances, workers can be in breach of their existing work visa.

### Quota Systems

Various countries operate quota systems limiting the number of foreign hires a company is permitted. Quotas exist in many African countries as well as the Middle East.

For example, the Nitiqat scheme in Saudi Arabia imposes quotas on the number of Saudi nationals that must be hired in proportion to foreign nationals. The proportion will depend on the size of the company as well as the industry it operates in. Depending on a company's classification, different hiring restrictions or benefits will apply.

Businesses who do not have a clear understanding of their Nitiqat obligations are at risk of being downgraded to a lower category and may even face permanent closure by the Ministry of Labour (MoL). This affects existing employees who may need to leave the country or else gain new sponsorship, and could potentially bring business operations to a halt.

In managing compliance with Nitiqat obligations, it is important to understand how "Saudisation" levels are calculated and whether additional measures can be taken to improve these. Relevant factors include whether employees are working full or part-time, are students or disabled, have previous convictions, are married to a Saudi national and the level they are paid at.

More recently, there has also been a focus by the government on exploitation of the system, whereby sponsors deliberately downgrade themselves and then recruit just enough Saudi citizens to upgrade and benefit from the requisite rewards to be able to continue running their business. Such behaviour is now being heavily scrutinised by the MoL who are starting to consider historic patterns of behaviour, looking at the broader picture and intent of the rules, rather than just compliance with basic requirements.

In light of the above, an audit of existing recruitment processes with a long-term view to compliance may be in order including revisions to company policy where necessary.

### Fraudulent Documents

Recent times have seen the proliferation of fraudulent documents used in immigration applications, particularly those made from the Philippines and India. The risk posed by individuals to the company can often go unnoticed until verification checks are undertaken by Embassies once the application has been submitted for consideration. In recent examples we have seen employees obtain fraudulent attestations to qualifications which are then used to apply for visas to work in the Middle East. Employers often discover these falsities too late in the process costing them money and time as well as potential risk to their business.

### Conclusion

Governments across the world are moving towards an increasingly subjective immigration system. Merely demonstrating compliance with immigration requirements at the point of application is proving no longer to be sufficient. Immigration authorities will assess a wider range of factors, including historic behaviours, in deciding the genuineness and credibility of an application. For the longevity of a business, risk management therefore goes beyond meeting basic requirements and, instead, taking a pro-active stance and long-term view to ensuring ongoing compliance. It would be prudent for companies to seek advice and guidance at an early stage and particularly find workable solutions to manage their business visitor population with full visibility of where employees are travelling to and how much time they are spending in these locations.



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