VISALAW INTERNATIONAL NEWSLETTER

March 2017

INTRODUCTION

I am delighted to introduce the new Quarterly Newsletter prepared by members of Visalaw International, which is intended to act as a useful aide memoire of recent important developments in the national immigration policies of Visalaw members.

Please contact the Visalaw member in your jurisdiction for further advice.

Graeme Kirk
(Chair of Visalaw International)

UK IMMIGRATION UPDATE

IMPORTANT CHANGES TO TIER 2 AND THE IMPLICATIONS FOR EMPLOYERS

In March 2016, the government announced its intention to review Tier 2, which is the main immigration route for non-EEA nationals working in the UK. These changes are intended to ensure that employers are encouraged to train resident workers, whilst continuing to have access to a migrant workforce. These changes will come into effect in April 2017.

THE CHANGES ARE AS FOLLOWS:

(A) The launch of the new Immigration Skills Charge (ISC) will impose a levy of £1,000 per year for each Tier 2 migrant sponsored. Accordingly, for a five year CoS, this will add a further £5,000 to the cost of sponsorship. A reduced ISC rate of £364 per year will apply to those in the charitable sector and to small businesses (defined as those with turnover of less than £10.2million and 50 employees or fewer). There will be some limited exemptions from the Immigration Skills Charge, such as Tier 2 migrants sponsored before 6 April 2017 who wish to extend their leave in the UK with the same or a different sponsor, PhD-level roles and students switching in the UK from Tier 4 to Tier 2 (General). Dependants of Tier 2 migrants will not be subject to the ISC.

(B) The introduction of the Immigration Health Surcharge (IHS) of £200 per applicant per year to the currently exempt Tier 2 (Intra Company Transfer) (ICT) migrants and their dependants. For example, this will see an increase of £1,000 to the cost of transferring a Tier 2 (ICT) migrant to the UK for five years, or an increase of £2,000 if transferring one Tier 2 (ICT) migrant and their spouse to the UK for the same period.

(C) The closure of the Tier 2 (ICT – Short Term Staff) (ICT – STS) sub-category, which will require employers to instead sponsor such workers under the Tier 2 (ICT – Long Term Staff) (ICT – LTS) sub-category, with its higher salary thresholds (the minimum salary for Tier 2 (ICT – STS) is £30,000 whereas the minimum salary for Tier 2 (ICT – LTS) is £41,500).

(D) The introduction of criminal record certificates for certain healthcare, education and social welfare professionals and their dependants applying for entry clearance under Tier 2 from all countries in which they have lived for twelve months or more (whether consecutively or cumulatively) in the previous ten years. This provision (which signals the beginning of anticipated rollout to all Tier 2 migrants) may add further delays and costs to the application process.

(E) Tier 2 (General) salary thresholds for experienced workers will be increased from £25,000 to £30,000 (with exemptions continuing for some health and education professionals until July 2019).

However, not everything is bad news.

THE FOLLOWING IS GOOD NEWS:

(A) The removal of the requirement for at least 12 months employment in a group company abroad for Tier 2 (ICT) applicants who are earning at least £73,900 per annum. In principle, this should enable certain new hires abroad to be transferred to the UK under the ICT route rather than having to apply under Tier 2 (General) which usually requires a RLMT. However, please note that ICT migrants are ineligible for indefinite leave to remain in the UK (also known as permanent residence) and therefore for some applicants Tier 2 (General) will remain the better option.

(B) The Tier 2 (ICT) 'high-earner' threshold allowing Tier 2 (ICT) migrants to extend their leave to a maximum of nine years rather than five years has been reduced from £155,300 to £120,000.

(C) The minimum salary requirement for Tier 2 (ICT – Graduate Trainee) migrants will be reduced to £23,000 (from £24,800) and the number of places available to sponsors will rise from 5 to 20 per year.

Please contact any of the Gross & Co Immigration Team for advice on any of the above issues.

Tel: +44 (0)1284 763333
Web: www.gross.co.uk
Graeme Kirk: gdk@gross.co.uk
Sohan Sidhu: ss@gross.co.uk
Naomi Ogo: no@gross.co.uk

CANADA - IMMIGRATION UPDATE

ELECTRONIC TRAVEL AUTHORIZATION (ETA) USHERS IN NEW PASSENGER SCREENING ERA

A new era of airline passenger pre-screening has begun in Canada following on the footsteps of the United States. Canada now requires that airline passengers provide personal and background information prior to travel, in an effort to minimize the number of visitors who may be inadmissible when appearing at a Port of Entry.

Although authorities made electron travel authorizations (eTAs) available as of March 15, 2016, and visa-exempt foreign nationals who fly to or transit through Canada were expected to obtain

them, the requirement was only made mandatory as of November 9, 2016, after a leniency period expired. Individuals who are not otherwise exempt from obtaining an eTA will face considerable difficulty when attempting to board a flight to Canada.

Pursuant to Section 11 (1.01) of the Immigration and Refugee Protection Act (IRPA) the Federal government has created the requirement for visa-exempt foreign nationals to apply for an eTA. The section establishes the means by which that application must be made (i.e., through the electronic system).

Section 7.1(1) of the Immigration and Refugee Protection Regulations (IRPR) creates the requirement for visa-exempt foreign nationals to obtain an eTA before entering Canada, unless they are otherwise exempt by the regulations.

The eTA is a new entry requirement for visa-exempt, non-U.S. foreign nationals travelling to Canada by air. Travelers entering Canada by land, sea, and rail are not required to obtain an eTA. The purpose of the eTA program is to pre-screen travellers to ensure that they are admissible to Canada. The list of countries whose citizens require an eTA is found in Section 190 of the Immigration and Refugee Protection Regulations. Citizens of the United States and certain other small groups are exempt from obtaining an eTA. Specifically, Subsections 7.1(2) and 7.1(3) of the Immigration and Refugee Protection Regulations describe the individuals that are exempt from the eTA requirement.

Individuals who are required to obtain a Temporary Resident Visa (TRV) by reason of their country of citizenship do not need to obtain an eTA, as they are pre-screened at a visa post outside of Canada.

To apply for an eTA, foreign nationals must submit an application online using the eTA form at www.Canada.ca/eTA.

APPLICANTS WILL NEED TO PROVIDE THE FOLLOWING INFORMATION ON THEIR APPLICATION FORM:

- Passport details
- Personal details
- Occupation and previous travel
- Responses to background questions (to assess for health, criminality and immigration-related concerns)
- Contact information
- A filing fee of CDN $7.00

There is also a text area at the end of the application form which allows the applicant to briefly indicate if there are additional details that must be considered. The applicant may express an urgent need to travel to Canada, or to provide other relevant information in that area.

No documents can be uploaded or added to the eTA application. If any additional documents are required, the applicant will be notified by email. That can delay the application process significantly.

Once the applicant has successfully submitted the eTA application, he or she will receive an automated email confirming receipt by Immigration, Refugees, and Citizenship Canada (IRCC). This email will contain the application number, as well as a link to allow the applicant to check the status of their eTA application at any time.

Section 12.05 of the Immigration and Refugee Protection Regulations stipulates that an eTA is valid for five years or until the applicant's passport expires, whichever occurs sooner.
An eTA can be cancelled by a designated officer pursuant to Section 12.06 of the Regulations.
After the application is received by the system, it will create a "prospective" application and will then perform an identity search to determine if the applicant already exists in the databases, and will associate the application to any existing UCI (unique client identifier) where possible. If no adverse information is found, the system will automatically notify the applicant by email that the eTA has been approved.

Occasionally, applications cannot be automatically approved. In that case, they are referred by the system for manual review in IRCC Operations Support Centre (OSC), where officers can request additional documents or a security screening, or both. If documents are required from the applicant, he or she will be directed to create a MyCIC account, to which they will link their eTA application. MyCIC offers a secure environment in which the applicant may communicate with IRCC and vice versa.

When a decision cannot be made due to the need for an interview or other factors, the application will be referred to a visa office. Other circumstances will require assessment in an overseas mission, including applications that result in the need for a Permanent Resident Determination, a Temporary Resident Permit, etc.

Cases referred to overseas missions will be processed in the same way that Temporary Resident Visa applications are currently processed. Officers may request an interview with the applicant if required.

Applicants whose eTAs are refused will be notified by email of the reasons for the decision.
eTAs are enforced using Canada Border Services Agency (CBSA) Interactive Advance Passenger Information (IAPI) system. Unlike a Temporary Resident Visa, no counterfoil will be provided to an applicant upon approval of an eTA. Therefore, there is no official physical proof of the presence or validity of an eTA. Air carriers will use the CBSA's IAPI system to confirm that an IRCC authorization to travel (either a visa or eTA) is linked to the traveller's passport subject to the exceptions noted above. IAPI is an enhancement of the previous Advanced Passenger Information (API) program. It automates a previously manual process and requires air carriers to submit traveller API earlier (at check-in instead of take off). Air carriers will conduct their usual check-in procedures, which will now initiate an automated query in IAPI using the traveller's passport number and country of issuance. Before a boarding pass can be printed, IAPI must provide an "ok to board" message to the air carrier.

Travelers must be careful to determine whether they require an eTA and, if they do, apply for it well in advance of their anticipated travel date to avoid any difficulties.

The advent of eTAs raise several concerns. It is unclear whether there is sufficient legislative authority to make a determination that a traveller who is visa-exempt is inadmissible to Canada prior to appearing at a post of entry for a full examination, or if such determination runs afoul of basic principles of fairness. Yet, a traveller who requires an eTA and does not obtain it will be prevented from boarding a flight bound for Canada. Further, the eTA system implicitly deputizes airline personnel to enforce immigration legislation by denying boarding to a traveller who has been unable to obtain an eTA. These questions will no doubt be litigated in the future.

Please contact Sergio Kara of Karas Immigration Law Professional Corporation for advice on any of the above issues

Tel: +(1)416-506-1800
Web: karas.ca
Email: karas@karas.ca

FRANCE- IMMIGRATION UPDATE

THE IMPLEMENTATION OF THE LAW OF 7 MARCH 2016 ON THE RIGHTS OF FOREIGNERS IN FRANCE

The EU Directive 2014/66 has been implemented in France by a decree as of 1st November 2016. A French ICT regime in line with the directive has been created and the national ICT regime (known as SEM or Salarié en Mission) has been repealed. The regime is as follows in a nutshell:

THE MULTI-ANNUAL "ICT SECONDEE" RESIDENCE PERMIT (L313-24 I AND II)

- The multi-annual residence permit referred to as an "ICT Secondee" may be issued to a foreign employee who is a third-country national seconded by his employer to an affiliate company in France and for the purpose of holding a senior management position or to provide expertise without a contract of employment with the host entity in France.

- This involves the intra-group secondment (article L1262-1-2 ° of the Labor Code) in the framework of an assignment of senior management or contribution of expertise.

- The conditions required to benefit from the ICT secondment:
  - 3 months of continuous seniority in the group at least,
  - Intra-group secondment,
  - Secondment for a senior management position or contribution of expertise
  - Assignment of up to three years.

- No minimum pay threshold. The conditions of remuneration must be commensurate with the nature of the employment and it is necessary to show sufficient resources to meet his/her own needs and, where appropriate, those of his/her family members.

- When the envisaged duration of stay is less than or equal to 12 months, the foreign employee receives a VLS-TS (joint long-stay visa and permit to stay) labelled "ICT Secondee". When the envisaged duration of mission is more than 12 months, the foreign employee receives a long stay visa labeled "ICT Secondee" and on his/her arrival in France, a residence permit.

- The "ICT Secondee" residence permit allows intra-group assignments to be carried out in other member states of the European Union.

- Family members (spouse and minor children entering France) can receive the residence permit "ICT Seconde Family" which authorizes the stay and work in France. The duration of the card is aligned with that of the employee.

- “ICT Mobile Secondee” card (L313-24- III and IV)

- The residence permit "ICT Mobile Secondee" is issued to the foreign employee holding an ICT residence permit issued by another member state of the European Union and who is assigned to France for more than 90 days as an intra-group transfer.

- The conditions for benefiting from the ICT mobile secondment status:
  - Intra-group secondment
  - Be already admitted to another European Union country as a seconded ICT employee.

- The employment conditions specific to the ICT secondment and the legal remuneration thresholds would apply.
  - Show sufficient resources.

Please contact Karl Waheed of Karl Waheed Avocats for advice on any of the above issues.

Tel : 33 (0)1 43 66 94 27
Fax : 33 (0)1 43 66 94 28
Web: www.karlwaheed.fr
Email: karl.waheed@karlwaheed.fr

AUSTRALIA – IMMIGRATION UPDATE

OUTLINE OFF THE AVENUES FOR IMMIGRATION TO AUSTRALIA

There are many avenues for migration to Australia. The Temporary Work (Skilled) (Subclass 457) visa is one of Australia's most common visa's and is designed to enable employers to address labour shortages by bringing in genuinely skilled workers where they cannot find an appropriately skilled Australian. Businesses can employ overseas workers for up to 4 years in skilled occupations only. Strong worker protection measures are in place to ensure that overseas skilled workers are afforded the same workplace rights as Australian citizens.

When starting the process, the 457 visa attracts a threefold application process for potential visa sponsors and applicants: sponsorship, nomination and application. Sponsorship is the first step and occurs when an Australian registered employer applies for approval as a standard business sponsor. Nomination occurs when the employer nominates an occupation for a prospective or existing subclass 457 visa holder. Finally the person nominated to work in the nominated occupation can submit a visa application for the 457 visa.

Every July, the Department of Immigration and Border Protection (DIBP) routinely update its policies and regulations with relation to the myriad of visa subclasses, and the Subclass 457 is no exception. The Department is more stringent than every when assessing whether a position is a 'genuine position', and are becoming increasing forensic with compliance from Standard Business Sponsors.

Sponsor must satisfy certain requirements through the entire period of the sponsorship grant. One such requirement is the 'training benchmarks'. Training Benchmark A requires the sponsor to contribute the equivalent of at least 2% of the payroll of the business, in payments allocated to an industry training fund that operates in the same industry as the business. Training Benchmark B requires the sponsor to make a contribution, by way of recent expenditure to the equivalent of at least 1% of the payroll of the business in the provision of training to Australian citizen or permanent resident employees of the business.

It is most important to comply with any obligations directed by the DIBP and they can effect current and future sponsorship capabilities.

Please contact Anne O'Donoghue of Immigration Solutions Lawyers for advice on any of the above issues.

Tel: 61 (2) 9264 6432
Fax: 61 (2) 9264 6437
Web: immigrationsolutions.com.au
Email: Anne@immigrationsolutions.com.au

SWITZERLAND – IMMIGRATION UPDATE

THE MASS IMMIGRATION INITIATIVE IN SWITZERLAND

On February 9, 2014, in Switzerland, there was a voting about the "Mass Immigration Initiative" which was accepted by a very small majority of Swiss people (50.3 %). The proposed amendment of the Swiss Constitution requires, that the Federal Council and Parliament introduce a new admission system for foreign nationals that allows Switzerland to control and limit immigration while maintaining its general economic interests within three years.

The Federal Council was charged with the task, to prepare the new immigration system, although this new constitutional article was not compatible with the free movement agreement (FZA) with the European Union and thus not with the bilateral treaties. The Federal Council tried to find a friendly solution to not risk the bilateral treaties. To reach this goal, intensive consultations with the EU were held (summer 2016). Neither the Federal Council nor the Swiss Parliament wanted to cause a "Swexit". In December 2016, the Swiss Parliament agreed to a law compatible with the free movement agreement (FZA), according to which the employers would be required to report job vacancies to the Regional Employment Center (RAV), if strong immigration leaded to problems on the labor market, so that domestic applicants would get some advantage. A committee, however, has started a referendum against this new law in December 2016.

Before, in October 27, 2015, the National Initiative "Get us out of the dead end. Don't reintroduce immigration quotas!" (known as the Rasa initiative) was filed. It wants to remove the immigration article from the constitution in order to preserve new bilateral treaties with the EU. Because of this, the Federal Council finds, that the people should decide about this issue in a voting. At its meeting of October 26, 2016, the Federal Council recommended a direct counter-draft to the initiative.

This all shows, that the situation concerning immigration is rather confusing in Switzerland.

Please contact Caterina Naegeli of Buergi Naegeli Rechtsanwaelte for advice on any of the above issues.

Tel: +41 44 268 40 50
Web: bnlawyers.ch
Email: cnaegeli@bnlawyers.ch

USA – IMMIGRATION UPDATE

SKILLED WORKER REGULATION PUBLISHED ON NOVEMBER 18TH 2016

On November 18th, the US Department of Homeland Security and US Citizenship and Immigration Services published a long-awaited final skilled worker regulation that makes major changes to the H-1B program, I-140 green card applications and employment authorization documents.

Some opponents of skilled worker immigration are already targeting the regulation and members of Congress could use the Congressional Review Act to pass a resolution disapproving of the new regulation. They have 60 days from the point when the regulation is published (excluding recesses) to pass a joint resolution opposing the regulation. President Trump would then have to agree or Congress would have to override his veto.

ACCORDING TO DHS, THE REGULATION PROVIDES THE FOLLOWING NEW BENEFITS:

- streamlining the process for US employers to workers for green cards,
- increase job portability and provide greater stability and job flexibility for such workers, and
- increased transparency and consistency in the application of agency policy

THE RULE COVERS THE FOLLOWING SUBJECTS:

- Codifying policies regarding H-1B extensions beyond six years under AC21
- Codifying policies regarding INA 204(j) portability allowing certain workers with pending adjustment of status applications to change employers
- Codifying policies regarding H-1B portability allowing workers to begin employment with a new employer upon the filing of a new H-1B petition
- Counting workers against the H-1B cap including clarifying when time spent abroad counts against H-1B time and determining which workers are "cap-exempt" as a result of previously being counted against the cap
- H-1B cap exemption determinations for employers
- Protections for H-1B whistle blowers
- Survival of an I-140 petition when an employer attempts to revoke it
- The establishment of priority dates in green card cases
- Retention of priority dates when workers change employers or accepts promotions
- Eligibility for employment authorization for backlogged employment-based green card applicants with "compelling circumstances"
- Extension of the H-1B's ten day before and after grace periods to E-1, E-2, E-3, L-1 and TN classifications
- Creation of new 60 day grace periods for workers who stop working prior to the end of a non-immigrant validity period (applicable to E-1, E-2, E-3, H-1B, H-1B1, L-1, O-1 or TN classifications)
- H-1B licensing requirements
- Automatic extension of EAD validity for 180 days for certain work card categories
- The end of the 90 day adjudication requirement for EADs

The rule is set to take effect on January 17th 2017.

Please contact Greg Siskind of Siskind Susser for advice on any of the above issues.

Tel: +(1)901-682-6455
Web: visalaw.com
Email: gsiskind@visalaw.com