



**REPRESENTATION TO THE GOVERNMENT OF INDIA**

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**Employment permission for spouses of intra-corporate transferees**

Permits Foundation is an international non-profit corporate initiative to promote access of accompanying spouses and partners of international staff to employment through an improvement of work permit regulations.

More than forty major international companies and organisations worldwide have joined the Foundation to encourage governments to relax work permit regulations that currently make it difficult for spouses to work in many countries.

The issue is a concern to international companies and organisations which, in view of the increasing number of dual careers, experience work permit barriers for spouses as a hurdle to employee mobility, equal opportunity and diversity.

**THE NEED FOR CHANGE**

Several international surveys show that concern about partner employment is one of the main reasons why employees turn down an international assignment. This affects men and women of all nationalities working internationally in both the private and public sectors.

In Permits Foundation's 2008 global survey (Annexure 1), 96% of respondents said that countries that allow spouses and partners to work easily are attractive destinations for an expatriate assignment. Countries with work permit restrictions for spouses and partners are less attractive. 58% of spouses and partners indicated that they would not relocate in future to a country where it was difficult to get a work permit.

What was a personal issue has become a corporate issue. At the same time, it presents an opportunity for countries to create a competitive and attractive climate for international investment and highly skilled, mobile employees.

**BEST PRACTICE - OPEN WORK AUTHORISATION FOR SPOUSES**

Permits Foundation promotes the best practice of an open work permit or authorisation for legally resident expatriate spouses or partners. This gives the partner immediate access to the employment market once they have obtained their accompanying family member visa. It

also facilitates self-employment, part-time and temporary work, reduces bureaucracy for the authorities and helps employers fill urgent and temporary vacancies.

This makes countries more attractive business destinations for international companies and organisations. It helps to attract skilled employees who make a positive contribution to the economy and supports integration of legally resident persons. The numbers involved are small, making it easy for governments to consider concessions. Permits Foundation argues that this small, but important concession represents a “triple win” for host countries, employers and families.

Moreover, as more countries adopt the best practice, this benefits spouses of all nationalities who can continue to work and develop their skills while assigned abroad, thereby also reducing the burden of reintegration upon return home. In this way, the benefits of international mobility extend globally to home countries as well as host countries.

## **INTERNATIONAL COMPARISON**

Increasingly, countries view business-related transfers differently from long-term immigration and recognise the benefit of introducing country “attractiveness” measures.

In recent years, 20 host countries have removed or relaxed employment visa or work permit regulations, making it easier for accompanying spouses to work. A summary overview of the regulations in these countries, including official sources, is given in Annexure 2. The UK, Australia, Canada, New Zealand, Hong Kong, France and the Netherlands are among the best practice countries that allow spouses (of skilled or highly skilled staff) to work freely. Singapore and Malaysia have simple local conversion procedures. We also attach more information on the UK and Malaysia to illustrate the regulations in detail.

All the countries that allow spouses and other dependants to work apply the regulations to all nationalities. None of them have adopted bilateral arrangements, except for dependants of diplomatic staff for reasons associated with diplomatic immunity. This means that spouses of Indian employees are already permitted to work in other countries, without the burden and complexity of bilateral agreements.

## **THE SITUATION IN INDIA**

We believe there is a clear rationale for enabling spouses of foreign employees in India to work as an inherent facility of the dependent visa and co-terminus with the tenure of the principal holder of the Employment Visa.

The number of highly skilled expatriates in India has been rising, though it is still relatively small. Rough estimates are around 50,000, of which 15% are in lead positions. Taking all data into account, it is safe to assume that the total number in high-skilled jobs is between 50,000 and 100,000.

Currently, the spouse and dependants of an employment (E) visa holder are allowed entry under an X visa, which does not permit employment. Subsequent employment of a spouse requires him/her to go back to the home country and apply for changed status and an E visa. According to the Bureau of Immigration, the powers of visa conversions and extensions to foreigners vest with the Ministry of Home Affairs (MHA). A change of status from one category to another is normally not allowed. It can be considered by MHA only in extraordinary circumstances.

There are also no specific visas for forms of employment that may not have a company offer attached (ones that spouses may typically seek): consultancy, freelancing, voluntary work, charitable work, work out of home or part-time work. With Internet technology, some spouses may have an employer or clients who are located outside India.

One of the biggest challenges is the lack of clarity and variation in judgement on employment situations and visa conversion that results from counsellor discretion, especially in the event of multiple conversions of visa in a short span of time.

Further, in tandem with the reporting requirements for long stay visas, the process of extending, registering and reporting a change of situation can get bogged down by complex processes, lack of clarity on required documentation and procedural delays.

**The government has responded well in the past to the calls of industry to make specific changes in policy to aid the entry, stay, employment or transit of foreign nationals for key business sectors and to support Indian economic goals.**

Further, we understand that certain categories of spouses have been allowed to undertake 'gainful occupation' under their existing visa. These are usually the result of international or bilateral treaties, FDI group approvals, PIOs, marriage to Indians and, in certain instances, specific to a country without a bilateral agreement due to requirements for specific talent.

**In the absence of specific rules for spouses and dependants beyond a co-terminus X visa, spouses are put to inconvenience, expense and often frequent and long drawn visits to visa sections and the FRRO.** (Annexure 3 has further background.)

**Equally for the implementing agency, there is the additional and unnecessary burden of frequent and time-consuming review of each case on its merits.**

The most compelling reason lies in the intention of the Government of India to make the visa process simple, efficient and fast. In that context, we believe that the situation of spouses is more a matter of oversight rather than the result of deliberate policy. Consequently, simple changes in the visa administration for employees of a certain category would make a large and logical difference.

## **KEY CHALLENGES FOR SPOUSES OF EXPATRIATES**

The top difficulties that spouses experience are:

- Work permit requires a job offer i.e. linked to a specific employer
- Uncertainty whether work permit will be granted
- Lengthy process, especially combined with the requirement (in practice if not absolute) to go back to base country or another country to apply, since very few spouses are able to organise job before they arrive.
- Employers prefer a candidate who does not require a work permit
- Don't understand the regulations (not clearly written or not easily accessible)

## **PROPOSAL**

We would like to submit for your consideration the following changes to the laws on employment visa and spouse visa in order to facilitate this.

- 1. As a first immediate step, Permits Foundation proposes that spouses of employees on inter-corporate transfers are permitted to change their visa status by applying to the FRRO in India. The process could be governed in the same fashion as applications for E Visa and X Visa**
- 2. NEW CATEGORY FOR INTRA-CORPORATE TRANSFEREES**

Subsequently, we propose the following change in policy:

- i. A specific category (E1) is created for applicants who are transferred to India by a company or international organisation.
- ii. Such a visa would be a non-immigrant visa, and valid for a relatively short amount of time - generally three years.
- iii. These visas would be available to employees of an international company or organisation with offices in both a home country and India, or which intend to open a new office in India while maintaining their home country interests.
- iv. Expatriate employees of Indian Multinational Companies approved by the Ministry of Company Affairs (or equivalent authority) with offices abroad would also be eligible for this category.

The E1 visa would be used to transfer to an Indian parent, affiliate, subsidiary or branch office an employee from a related foreign or Indian company.

- a. Application for an E1 visa would provide all supporting documentation showing that both the Indian company and/or the foreign parent, subsidiary, affiliate or branch meet the qualifying factors set forth in the law and regulations.
- b. The Indian company and the foreign parent, subsidiary, affiliate or branch would provide documentation specifying the requirement of the employee for Indian operations, the nature of the employment, and undertaking to inform the FRRO and concerned departments in the event of termination, transfer or resignation of the employee from the services of the company.
- c. The E1 Visa would cease to be valid in the event of change of employer and the person concerned would need to go back to the home country for a fresh employment visa.
- d. An application in India for extension of the visa with the same employer would be allowed.
- e. The E1 Visa holder would need to register with the FRRO for stays longer than 180 days.

### **3. NEW CATEGORY FOR SPOUSE OF INTRA-CORPORATE TRANSFEREE**

- i. A specific category (XE1) is created for the spouse or dependents of E1 Visa holders.
- ii. The spouse and children under the age of 21 may be issued the XE1 visa.
- iii. Children of the primary E1 can attend school.
- iv. The Spouse of an E1 visa holder can work for any employer subject to:
  - Registration with the FRRO within 14 days of arrival in India for stays in excess of 180 days
  - Intimation to FRRO within 14 days of change in location within India
  - Securing approval from FRRO for employment in companies or sectors where special permission is required from MHA for all E visas.
  - Will not take up employment in any sector treated as restricted and disallowed to all E visas by the MHA.
- v. An XE1 Visa would be co-terminus with the E1 Visa.
- vi. An XE1 Visa would cover all types of legal employment, paid or voluntary, full-time or part-time, work from home, work with NGOs, research fellowships, guest programs, project assignments and offshore work.

## OUR SUBMISSION

We believe that through the changes recommended by Permits Foundation or amendments to the existing visa laws to that effect, India will become an even bigger draw for global talent as families would be assured of an environment where the spouse can find his/her own occupation to follow.

We look forward to your urgent attention on this matter and seek your assistance in making India a preferred destination for the global talent pool that today strengthens both Indian companies with global operations and transnational corporations with large commitments in India.

**Kathleen van der Wilk-Carlton**

*K. van der Wilk.*

Board Member, Permits Foundation

## ANNEXURES

1. Report of global survey of spouses of intra-company transferees
2. International comparison of employment work authorisation for spouses
3. Study on issues with current Indian visa regime for spouses
4. Detailed regulations on spouse employment in the UK
5. Detailed regulations on spouse employment in Malaysia

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