

India - Progress to date

for Round Table May 2013

- *Current visa regime for accompanying spouses*
- *The Feb 2011 improvement*
- *Continuing challenges and concerns*
- *The proposed change*
- *Recent steps taken*
- *Other steps under consideration*
- *Discussion, suggestions*



Visa regime for spouses in India

- Currently, the spouse and dependants of an employment (E) visa holder enters India under an X visa
- X visa does not permit employment.
- Until February 2011, if spouse later got a job offer, he/she had to go back to home country and apply for changed status and an E visa.

Visa regime – conversion of visa type

- Powers of visa conversion and extension for foreigners lie with the Ministry of Home Affairs (MHA).
- Change of status to another category normally not allowed. (extraordinary circumstances only).
- Following representation by Permits Foundation, an exception was introduced to allow spouses of employees on an intra-company transfer to change their visa status in India.

Foreigners Division (MHA) acknowledged our concerns

Feb 2011

“Guideline regarding Conversion of ‘X’ (Entry) visa of spouse of an employee on intra-company transfer into Employment Visa.”

- Created a special sub-category of X Visa holders, the spouse of the intra-company transferee, and removed the need for them to return to home country to apply for E Visa.
- The spouses of employees on intra-company transfer can now apply for conversion of X visa into E Visa in India, with prior approval of Ministry of Home Affairs (Foreigners Division), after obtaining a report from the FRRO/FRO concerned and subject to the conditions for an E Visa.

Communication of the Feb 2011 guideline

- Notified to all the states and incorporated in their publications
- Via Circular No. 395 on Guidelines regarding conversion of 'X' (Entry) visa of spouse of an employee on intra-company transfer into Employment Visa
- The notice referenced Employment Visa and Circular no. 388 (F.No.25022/124/2008-F.I) dated 30 September, 2010 conveying certain modifications in para 44 – “Conditions for grant of Employment Visa in the revised Chapter 4 of the Visa Manual pertaining to Employment Visa”

The 2011 guideline was a welcome first-step change.....

- welcomed widely by Indian media, Indian and global investment-oriented enterprises, including leading global consultancy firms, **however.....**
- falls short of best practice in a growing number of countries where the spouse may take up employment or self-employment for the duration of the assignment.

Spouses still face challenges

- E visa requires a job offer & contract - i.e. linked to a specific employer (in India)
- A highly skilled job with a minimum salary of US\$ 25,000 per annum
- Uncertainty whether work permit will be granted
- Lengthy, cumbersome process
- Employers prefer a candidate who does not require a work permit.
- Barrier for professional spouses who wish to take temporary or part-time project work or self-employment.
They may not have a job offer or a single employer.
- Transfer back to an X visa if employment ends not addressed in 2011 guideline

So a number of expatriate spouses fail to qualify for Employment visas and highly skilled employees continue to have reservations about accepting an assignment in India.

Proposed new change to visa regulation

(ref. representation updated April 2013)

- Authorise the spouses of (specified categories of) E visa holders to take employment or self-employment
- *A new classification XE stamped on such spouse visas permitting them to work or be self-employed.*
- *Co-terminus with the principal Employment Visa holder.*

Proposed Change

using same format as website of Foreigners Division (MHA)

1. Proposed amendment under “**FAQs relating to work related Visas issued by India**” http://mha.nic.in/pdfs/ForeignD-work_visa_faq.pdf

Q. Are accompanying family members of an E visa holder permitted to work on their dependent X visa ?

Ans. *Spouses of E visa holders who are intra-company transferees, meeting the conditions in Q 5 of FAQs on work related visas issued by India, are permitted to take employment or self-employment for the same duration as the principal E visa holder.*

Proposed Change

using same format as website of the Foreigners Division (MHA)

2. Proposed amendment to “Guidelines on work related Visas – regarding conversion of ‘X’ (Entry) visa of spouse of an employee on intra-company transfer into Employment Visa”

The spouse of an employee on intra-company transfer will be permitted to be employed or self employed subject to the following conditions:

- (1) The foreign national must comply with all legal requirements like payment of tax liabilities etc.*
- (2) Condition of annual floor limit on income will not apply*
- (3) Work permission will be valid until the same date as the principal Employment Visa holder.*