

NOT-SO-INCREDIBLE

Expat better half comes off worse in work-visa law
Rules hinder dependent visa-holders from working despite valid intra-co job transfer

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LAST August, when Miranda Green's husband, Drew, got an offer from Shell to relocate to India on an intra-company transfer with full international terms, the Dutch couple was ecstatic. It helped that the energy company promoted dual-career couples like Miranda and Drew--both had worked for over 20 years with Shell, she in the accounts department and Drew as a materials and corrosion engineer. The company also needed an accounts specialist with expert knowledge of Shell's processes to lead its new business support organisation in Bangalore, and Miranda's qualification and experience with Shell were a perfect fit for the job.

Things seemed to be going according to plan for the couple till they applied for work visas (called employment, or 'E' category, visas) at the Indian embassy in the Netherlands this February. While Drew, 46, got his, Miranda's was refused on the grounds that as an expatriate's (expat's) wife, she is not eligible to work in India.

"My job meant a lot to me. Drew and I were shocked and devastated. It became clear in our discussions with the embassy that any further appeals might make matters worse. After a lot of soul-searching, we decided to go ahead with Drew's assignment and I resigned my job to accompany him (to Bangalore)," says a dejected Miranda.

For 35-year-old American Brandon de Cuir too, the passage to India as an accompanying spouse has been a difficult one. Spouse clause takes sheen off India posting

BRANDON'S wife, Christi DeCuir, a business development executive, got an India assignment on an intra-company transfer with Cisco Systems starting January 2008. Since Brandon's then employer--Seattle-based renewable energy firm Blue Marble Energy--did not have operations in India, it became difficult for him to obtain a visa. So he thought he would do the next best thing: try and land a job in India's tech capital, Bangalore.

"I tried with at least four local start-ups, but the fact that as an accompanying spouse I would need to return to my home country to apply for an employment visa and the inherent bureaucracy and uncertainty in the whole process put the companies off making a job offer," says Brandon, who is now willy-nilly a full-time homemaker and baby-sitter--the couple were blessed with a baby boy, their firstborn, last fortnight.

"This is such a pity as the Indian government says it wants to encourage the type of technologies in which I have expertise," he added.

The Greens and the de Cuirs are among the hundreds of expat couples whose India dreams begin to sour when they come into contact with an outdated visa regime that hinders dependent visa-holders, chiefly spouses, from automatically working in the country even after a valid job offer on an intra-company transfer.

Couples of Indian origin—who often opt for a career move to India—too are impacted by this law. Currently, foreign nationals coming to India on an employment visa may obtain an “X visa” meant for dependents such as spouses. If the spouse decides to take up employment in India, the person will be required to go back to the port of origin and obtain an employment visa, which could take a long time. Refusal rates, too, are high, as in the case of Miranda Green.

There are over 50,000 highly skilled expat employees in India working with Indian and overseas multinational companies, according to an estimate by the Hague-based Permits Foundation, a not-for-profit organisation that lobbies governments globally for open work authorisation for expat spouses. The foundation counts 42 leading transnationals such as Shell, Ericsson, British Airways, ING, Unilever, AstraZeneca and KPMG among its corporate sponsors.

“India is a growth story; every company wants to bring its best people to India, and our members put India right on top of our priority list along with Indonesia, Malaysia, the European Union and China,” says Kathleen van der Wilk-Carlton, a member of the Board of Permits Foundation.

The foundation has recently begun a lobbying effort with the Indian government to make it easier for highly skilled spouses of expats to work in this country. It is also in talks with member companies on the issue.

“They (the companies) all recognise this as a small but important issue. It starts with being a personal issue, but becomes a corporate issue (soon),” adds Ms Wilk-Carlton.

Archana Bhaskar, HR head of Shell India, says spouses not being able to work has become an issue because of the criticality of expat skills, especially in a sector like oil and gas. “Invariably, the question from these potential expat hires is whether their spouse can work in India, and often they don’t accept India postings because this is not easy,” she said. The Shell Group employs around 100 expats among its 2,000 staff.

Globally, despite protectionism by some governments in the wake of the economic slowdown, the cross-border movement of highly skilled professionals remains critical for multinational corporations. Experts feel that India, too, needs to imbibe a range of skills that are not available locally to cross-pollinate them with the ones that exist in the country.

As far as the Indian government is concerned, it is grappling with a huge backlog of cases pertaining to various visa issues such as extensions and transfers since 2003, “and any big change on employment visas looks unlikely,” feels Mumbai-based immigration lawyer Poorvi Chothani.

A senior official in the ministry of home affairs told ET that there is no policy change in the offing for spouses of foreign nationals coming to India on employment visas.

“The Indian rules are merely reflecting old patterns of expat entry when spouses were not working. It is probably an oversight, but for us it’s early days in our engagement with the government here,” observes Ms Wilk-Carlton.

Work permit-related restrictions often depend on reciprocal arrangements between two countries. “Some MNCs have been lobbying with the Indian government to allow spouses of employment visa holders to work in India. However, it often depends on reciprocal protocol in the country of origin. For instance, there are a large number of Indians in the US on H1B visas and their spouses are not allowed to work there. Besides, the mandatory payment of social security is also an issue with the H1B visa holders. Sorting out such reciprocal issues would help in easing work permit issues for spouses of expats working in India,” says Sonu Iyer, tax partner, at Ernst & Young.

Compared to some of the countries where there are a large number of Indians on work permits, India does not fare too well in offering a level playing field for spouses of work permit holders. "Increasingly, countries view business-related transfers differently from long-term immigration and recognise the benefit of introducing country 'attractiveness' measures," the Permits Foundation wrote while presenting its case to the home ministry.

Miranda says that right now they are only eight weeks into her husband's assignment, so she is busy with the challenges of settling into a new country. "But there will come a moment when I want to think about what else I can do to keep my brain active and my employment skills up to date. If I do find another job, I understand that the regulations require me to go back to the Netherlands to start the whole employment visa process again. I don't relish the thought of it," remarks Miranda, who says that her husband has already halved his four-year

assignment because of the country's unsympathetic work visa regime for expat spouses.

A global survey by the Permits Foundation covering over 3,000 expat spouses in 117 countries in December last year lists lack of job opportunity for the spouse as a major mobility deterrent for senior executives.

Brandon says that he and his wife have now been in India 18 months and his desire to work in the host country has been a major factor in deciding not to stay here longer despite the fact that Cisco would have liked his wife to extend her contract. "My wife's next posting is likely to be in Europe where there are several countries in which I, as an accompanying spouse, am permitted to take employment or self employment without needing a separate work permit. This will make it a really attractive posting for both of us," he said.