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**Right to work of spouses of expatriate intra-corporate transferees in India**

**SUMMARY**

Permits Foundation is an international non-profit organisation campaigning globally to improve work permit regulations to make it easier for spouses and partners of expatriate staff to gain employment during an international assignment. This is an issue for international employers as work permit difficulties for spouses are a hurdle to the mobility of their globally assigned staff. Countries increasingly recognise that this has an adverse effect on international business and investment. As a result, 30 countries now grant a right to work for spouses of intra-corporate transferees or other highly skilled staff.

In 2011, the Ministry of Home Affairs Foreigners Division acknowledged our concerns with a guideline on the Conversion of 'X' (Entry) visa of spouse of an employee on intra-company transfer into Employment Visa. (Appendix 1, Section XIII.) This created a special sub-category of X Visa holders, the spouse of the intra-company transferee, and removed the requirement for them to return to the home country to apply for an Employment Visa.

This first-step change was welcomed widely by Indian media, Indian and global investment-oriented enterprises, including leading global consultancy firms. However, it falls short of the best practice in a growing number of countries where the spouse may take up employment or self-employment for the duration of the assignment. The Indian Employment Visa is conditional on an offer of a highly skilled job with a minimum salary of \$ 25,000 per year. This continues to be a barrier for professional spouses who may wish to take temporary or part-time project work or self-employment. Such spouses may not have a job offer or even a single employer in line with the Employment Visa norms. As a result, 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.

**We would like to submit for your consideration a proposal for a NEW VISA CATEGORY FOR INTRA-CORPORATE TRANSFERS (Appendix 2). This proposal has emerged after several rounds of discussion with Mr. V. Vumlunmang in his then capacity of Joint Secretary, Foreigners Division, and the officers of the foreigners Division as well as other associated divisions.**

Forty major international companies and organisations worldwide sponsor the work of Permits Foundation. (Appendix 3).

## **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 spouse survey (Appendix 4), 96 per cent 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 per cent of spouses and partners indicated that they would not relocate in future to a country where it was difficult to get a work permit.

In a follow-up corporate survey in 2012 (Appendix 5), 96 per cent of employers report that being able to transfer employees internationally is of high importance to their organisations. And 66 per cent report that partner careers and employment impact their organisation's ability to attract employees to international assignments. According to respondents, 51 per cent of these organisations had experienced assignments being turned down because of partner employment concerns.

These findings present 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 obtain their accompanying family member visa. It also facilitates self-employment, part-time and temporary work, it reduces bureaucracy for the authorities and it helps employers to fill urgent and temporary vacancies.

Permits Foundation argues that this small, but important concession represents a 'triple win' for host countries, employers and families. Countries become more attractive business destinations for international companies and organisations, whose skilled employees and their families integrate into the community and make a positive contribution to the economy. The numbers are small, making it easy for governments to consider concessions. And as more countries adopt the best practice, it benefits spouses of all nationalities who can continue to work and develop their skills while assigned abroad, thereby 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 recognize the benefit of introducing country "attractiveness" measures.

In recent years, more than 30 host countries have relaxed employment visa or work permit requirements, making it easier for accompanying spouses to work. A global overview is given in Appendix 6 and a summary of the regulations, including official sources, is given in Appendix 7. The UK, Australia, Canada, New Zealand,

Hong Kong, France and the Netherlands are among the best practice countries that allow spouses (of intra-corporate or other highly skilled staff) to work freely. Singapore has a simple local conversion procedure.

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 assigned abroad can already work in these countries, without the complexity of bilateral agreements.

## **THE SITUATION IN INDIA**

Currently, the spouse and dependants of an employment (E) visa holder enter India under an X visa, which does not permit employment. Until February 2011, subsequent employment of a spouse required him/her to go back to the home country and apply for changed status and an E visa.

The powers of visa conversion and extension to foreigners vest with the Ministry of Home Affairs (MHA). A change of status to another category is normally not allowed and can be considered only in extraordinary circumstances. However, 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.

The February 2011 regulation “Guidelines regarding conversion of ‘X’ (Entry) visa of spouse of an employee on intracompany transfer into Employment Visa” is attached as Appendix 1, Section XIII.

The spouses of employees on intra-company transfer can now apply for conversion of ‘X’ visa into E Visa in India, with the prior approval of the Ministry of Home Affairs (Foreigners Division) after obtaining a report from the FRRO/FRO concerned and subject to the conditions for an E Visa.

However, this means that spouses still face the following difficulties:

- Work permit requires a job offer and contract linked to a specific employer (in India)
- 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.

## **NEED FOR FURTHER AMENDMENT**

While the February 2011 guideline was a significant step forward, it falls short of best practice in a large number of countries that permit the spouse to take up employment or self-employment for the duration of the assignment. Indian spouses accompanying employees on intra-company transfer abroad benefit from these arrangements. (Appendix 6).

Further, the conditions for an Employment Visa present a barrier for professional spouses who work as consultants, freelancers, voluntary workers, part-time employees and home-based professionals, including some whose previous employers or clients in their home country would allow them to continue working from India. Such spouses do not have an employment offer as specified in the Employment Visa norms so they still do not qualify. As a result, the objectives of the new guidelines to improve acceptance of

assignments in India by highly skilled resources have not been met. Equally for the implementing agency, there is the additional and unnecessary burden of 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 current regulation has not met all the objectives of the Government of India due to the co-application of E visa norms.

## **PROPOSAL**

We would like to submit for your consideration a proposal for a NEW VISA CATEGORY FOR INTRA-CORPORATE TRANSFERS (Appendix 2). This proposal has emerged after several rounds of discussion with Mr. V. Vumlunmang in his then capacity of Joint Secretary, Foreigners Division, and the officers of the foreigners Division as well as other associated divisions.

## **CONCLUDING SUBMISSION**

Sir, 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.

The 2011 amendment to the visa guidelines for spouses of intra-company transferees was a significant step in that direction. We would like to submit that a further simplification for this small specific group, allowing them to take employment or self-employment, would address reservations of highly skilled employees in taking up short-term assignments in India.

Since this right would be co-terminus with the tenure of the principal E visa holder, it would not constitute a permanent employment right in any form. By providing work rights on the X visa for this small, specific group, the Government would also benefit from a simpler regime to administer.

We believe that through the changes recommended by Permits Foundation or amendments to the existing laws to that effect, India will become and even bigger draw for global talent as families would be assured of an environment where the spouse can find his or 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 strengthens both Indian companies with global operations and trans-national corporations with large investments in India.

Yours faithfully,

**Kathleen van der Wilk-Carlton**



Executive Director, Permits Foundation

## APPENDICES/WEB LINKS

1. [MHA guidelines on Employment Visa, incl. Section XIII on conversion of X visa to E Visa in India](#)
2. Proposal for a new visa category for intra-corporate transfers
3. [Companies and organisations supporting Permits Foundation](#)
4. [Report of global survey of spouses of intra-company transferees](#)
5. [Report of global survey of international companies and organisations](#)
6. [Global overview of spouse work permit regulations](#)
7. [Summary of regulations in countries that allow spouses to work](#)

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