Global Migration Section

AILA Global Migration Section Digest

WELCOME

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The GMS Publications Committee is pleased to issue this first GMS Digest of the 2017 – 2018 AILA year. Please enjoy our special features: a Spotlight Interview with Charmaine Bonia, an International Associate based in Jamaica, and a Summary of Findings regarding Nationality-based Entry Bans authored by the GMS Analytics Committee. You will also find articles regarding the Australian Business Talent Stream as an option to immigration to European countries; Austrian compulsory health insurance requirements; a Brexit update; and immigration developments in Brazil, Canada, and Romania. Special thanks to our article authors and Publications Committee Members: Chrystal Green, Poonam Gupta, Mark C. Holthe, Dana Imperia, and Susanne Turner for their work in producing this digest.

AILA GMS SPOTLIGHT INTERVIEW SERIES

Spotlight Interview with AILA International Associate Member, Charmaine Smith Bonia.

1. How is the practice of immigration regulated in Jamaica?

The practice of immigration in Jamaica is regulated by legislation.

2. Do you have immigration specific laws?

Yes, there are several laws pertaining to immigration in Jamaica. These apply based on three (3) categories:

- ***Caricom National****:* An individual from a member Caribbean state pursuant to the Revised Treaty of Chagaramus;
- ***Commonwealth Citizen****; and*
- ***Foreign National/Alien****:* a person who is not a Jamaican national, Caricom National, or Commonwealth citizen.

The Passport Immigration and Citizenship Agency (PICA) has authority to issue visas. The Ministry of Labor and Social Security (MLSS) handles all matters pertaining to work permits and works closely with PICA.

3. **Does your jurisdiction have quotas or other general requirements of a company, to be able to send employees?**

There is no limit on the number of non-Jamaican nationals that a Jamaican company can employ. The general requirement is that the company must be registered with the Companies Office of Jamaica.

4. **Can you explain general requirements that are imposed on Jamaican work permit and visa applicants?**

The following is a general overview of the requirements for Caricom Nationals, Foreign Nationals and Commonwealth Citizens, and Short-Term Business visa holders. I will also explain the Marriage Exception and requirements regarding newly hired employees and local employment contracts.

- ***Caricom Nationals***

  The Revised Treaty of Chagaramus (“‘the Treaty’”) has given rise to Community law obligations, which are binding, on Member states of the Caribbean Community. Caricom Nationals are citizens of the member states and are entitled to free movement, freedom to acquire property, and freedom to engage in gainful employment in Jamaica.

  A Caricom National who is seeking to engage in or find employment with a Jamaican employer or as a self-employed individual must present an immigration officer with a valid passport issued by a Caricom country and a qualifying Certificate recognizing him/her as a skilled person issued by the Ministry of Labor from his/her respective country.

  Caricom Nationals are provisionally entitled to six (6) months stay, within which period he must attend at the Ministry of Labor and Social Security in Jamaica to obtain a qualifying certificate from this jurisdiction and thereafter the Passport Immigration and Citizenship Agency to vary his status, if he intends to stay in the country for an extended period.

  Applicants seeking a Caricom Skilled Nationals Certificate may apply for unconditional landing using same. This endorsement automatically exempts him/her from a work permit or work permit exemption.

- ***Foreign Nationals and Commonwealth Citizens***

  Jamaican employers must apply for work permits on behalf of all Foreign Nationals and Commonwealth Citizens. Work permit applications must be submitted to the Jamaican Ministry of Labor before the employee lands in Jamaica. This application must state the reason for the proposed employment and outline the expertise of the individual which is not readily available in Jamaica. Proof of steps taken to employ a Jamaican for the role may be required but is not regularly requested in practice.

  Depending on the country the prospective employee is from, a work permit applicant will also require a visa. Visa applicants should file their applications with a Jamaican Consulate or High Commission prior to traveling to Jamaica or secure one at a Jamaican port of entry.

Foreign Nationals may not change their immigration status from visitor to employee while in Jamaica; however, this privilege is given to Commonwealth Nationals.

- ***Short-Term Business***

Jamaican law prohibits Foreign Nationals from *(a) engaging in any occupation in Jamaica for reward or profit; or (b) being employed in Jamaica unless there is in force in relation to him a valid work permit and he engages or is so employed in accordance with the terms and conditions which may be specified in the permit."*

Jamaican law does not clearly define "employment" or "work," even in relation to its own citizens. There is therefore a gray area in defining "work" for immigration purposes. In order to encourage and facilitate international business and investment, as well as generally making business operations easier, Jamaica allows Foreign Nationals, particularly directors, auditors, and others considered "technical experts" to enter the country as "visitors" that may conduct short-term business without an entry visa. "Visitors" can stay in Jamaica for no longer than thirty (30) days. "Visitors" may make multiple entries to Jamaica but their "visits" cannot cumulatively exceed one hundred and eighty days (180) days in a calendar year. Allowable "short-term business" is defined as "consultations, meetings, technical advice, inspections, and repairs."

- ***Marriage Exemption***

Individuals who marry Jamaican nationals may apply for an Exemption Certificate from the Ministry of Labor and Social Security. On approval, spouses of Jamaican citizens present this document to the Jamaican Passport Immigration and Citizenship Agency (PICA) along with their passports in order to have their immigration status changed. The marriage exemption endorsement is renewable every three (3) years for men who marry Jamaican nationals. Women who marry Jamaican nationals are granted this exemption for the duration of their marriages.

- ***Newly Hired Employees***

Jamaica allows companies to hire newly hired Foreign Nationals as employees. The government is more interested on whether the person has the desired qualifications/skills for a given assignment and is not presenting fake credentials; their tenure with a company's overseas operations is not material.

- ***Local Employment Contracts***

  Local employment contracts may be required of work permit applicants but are not mandatory across the board.

5. How long does a Jamaican work permit last?

Jamaican work permits are valid for the duration of time granted, which can be from three (3) months to one (1) year. The period of validity varies based on the industry in which the person will be employed.

6. Can the Jamaican work permit be extended?

Yes, an employee can apply for a work permit extension at the Ministry of Labor & Social Security with a letter from the employer indicating the reason for the extension. PICA subsequently issues an endorsement in the applicant's passport.

7. What are the average processing times for Jamaican work permits?

In practice, the average processing time for work permits varies from six (6) to ten (10) weeks. This is an area that the government is looking to shorten.

8. Can a prospective work permit applicant bring dependents?

Yes, dependents are the employee's spouse and children under the age of eighteen (18). In special circumstances, parents of the employee may be considered dependents.

9. Do partners or same sex spouses of work permit applicants qualify for dependent status in your jurisdiction?

No, because same sex partnerships/unions are not legally recognized under Jamaican law.

10. Advice to a client thinking of sending an employee to Jamaica:

Jamaica is a developing country and usually welcoming of technical experts and skilled persons seeking work authorization. Consequently, most work permit applications are successful.

Jamaican labor laws favor employees, so employers need to keep this in mind as assignees are treated as local employees. When treating or hiring local counsel, it is a good idea to make sure that they are versed in local labor laws and familiar with the local industrial relations culture.

11. Hot Topics or Trends

There is a recent trend in which immigration officers are strongly encouraging some short-term business visitors to apply for work visas based solely on their review of frequent entries to Jamaica (as documented by multiple entry stamps) rather than calculating the number of days of their stay.

HOW COMMON OR EXCEPTIONAL IS A NATIONALITY-BASED ENTRY BAN AS AN INSTRUMENT FOR IMMIGRATION CONTROL?

By the 2016 – 2017 AILA GMS Analytics Committee: Ann Chau, Jennifer Doreen, Gunther Mävers, Breno Torquato, Philippe Tremblay, and Marcel Reurs (chair).

This article was authored by the GMS Analytics Committee. The Analytics Committee aims to identify issues of non-U.S. immigration law that are relevant to the practice of U.S. immigration law. The committee works on collecting jurisdictional data, allowing comparison and analysis from a global perspective. The committee conducted a survey of nationality based entry bans following the issuance of U.S. President Donald J. Trump's January 2017 Executive Order 13769 re Protecting the Nation from foreign terrorist entry into the United States (FR Doc. 2017-00281, 8977-8982), which included a 90-day prohibition on the entry of nationals of Iraq, Syria, Sudan, Iran, Somalia, Libya, and Yemen, in connection with a "review to determine the information needed from any country to adjudicate any visa, admission, or other benefit under the INA (adjudications) in order to determine that the individual seeking the benefit is who the individual claims to be and is not a security or public-safety threat."

Survey

How common or exceptional is a nationality-based entry ban as an instrument for immigration control? The Analytics Committee has attempted to collect data to answer this question. We ran an email survey across GMS members, covering fifty-nine (59) jurisdictions. Members were asked to confirm if their jurisdiction currently has or in the past had a nationality-based entry ban in place after World War II and, if so, to provide details on its scope, nature, and duration. The survey ran in February 2017 and resulted in the following responses.

Responses

Arab Countries and Israel

Following the guidance of the Arab League, the following countries have a permanent entry ban for Israeli nationals: Algeria; Bangladesh; Brunei; Iran; Iraq; Kuwait; Lebanon; Libya; Malaysia; Oman; Pakistan; Saudi Arabia; Sudan; Syria; United Arab Emirates; and Yemen. It is permanent and includes all immigration categories. Several of these countries also refuse entry of individuals with another nationality whose passport contains Israeli stamps.

Mr. Thomas Donovan, who responded for Iraq, has noted that the entry ban in Iraq has not been challenged in court, but it has essentially been a non-issue since its inception, because very few Israelis ever come to Iraq – and if they do, it is normally on a secondary passport. Enforcement of the ban is also scant or non-existent, with certain areas of Iraq (such as the Kurdistan Region) simply ignoring the law and actively engaging Israel and Israeli corporate interests. We did not receive any responses as to how the entry ban works in practice in the other countries listed above.

South Africa

South Africa has an entry ban in place for nationals from Rwanda and the Democratic People's Republic of Korea. Ms. Zahida Ebrahim, who responded for South Africa, explained that the entry ban for Rwanda has been in place since 2015 due to the strained diplomatic relations between the countries. It is anticipated that the entry ban will be lifted as soon as these have normalized. The ban covers all Rwandese nationals and all immigration categories. Further, Ms. Ebrahim explained that the entry ban for North Korea was introduced in connection with UN Resolution 2270. It applies to all citizens of North Korea and all immigration categories.

Hong Kong

Mr. Philippe Tremblay, who responded for Hong Kong, explained that even though Hong Kong does not have an entry ban based on nationality, Hong Kong's administrative guidelines regarding Foreign ("imported") Workers exclude all citizens of Afghanistan, Cambodia, Cuba, Laos, Democratic People's Republic of Korea, Nepal, and Vietnam. Nationals of these countries are prevented from obtaining a work permit solely based on their nationality.

Additional Information IATA

The survey did not result in any other responses confirming a past or present entry ban in any of the surveyed jurisdictions. This does not mean that these do not exist. For example, The International Transport Association (IATA) provides the IATA Travel Center (http://www.iatatravelcentre.com) and Timaticweb2, offering passport, visa, and other travel information. IATA provides the following information on current entry or travel bans; however, the information has not been confirmed by immigration specialists:

- Nationals of Armenia and any person of Armenian descent are refused entry into Azerbaijan (this is due to the Azerbaijan-Armenia conflict).
- Nationals of Qatar are refused entry and transit into Libya (if arriving at Bayda or Tobruk), the United Arab Emirates (unless they are the father, mother, children, or spouse of a national of the UAE), and Saudi Arabia.
- Effective 7 March 2017, Nationals of North Korea are not allowed to enter or leave Malaysia, even if they have a valid visa.
- Nationals of Kosovo are refused entry and transit into Cuba.

Conclusions and Reservations

The responses we received combined with information from IATA appear to indicate that no European country has a nationality-based entry ban in place, and in the Americas, only the United States and Cuba do. Several Middle Eastern and Asian countries have an entry ban in place, motivated by ongoing conflict between the specific states.

We must note that this summary is based on the survey results the GMS Analytics Committee received between February and May 2017 and data retrieved from Timaticweb2 on 14 June 2017. Responses were not received from all jurisdictions that were surveyed. Therefore, while this summary is informative, it is not exhaustive.

BREXIT: CURRENT STATE AND THE UK GOVERNMENT'S PROPOSAL

By Philipp Trott
Philip is Senior Partner and Head of Immigration at Bates Wells Braithwaite in London, United Kingdom.

On 28 March 2017, the British government triggered Article 50, thereby formally notifying the European Council of the United Kingdom's intention to leave the European Union (EU). Article 50 provides for a two (2) year deadline for negotiations to be concluded between the EU and the exiting country, though this may be shortened or extended if agreed unanimously. While the triggering of Article 50 has been of significant concern for European nationals in the United Kingdom, it is important to note that until formal withdrawal by the United Kingdom from the EU, the legal position of these nationals continues to be "business as usual."

What is "business as usual"?

Nationals from the European Economic Area (EEA) and Switzerland currently enjoy the right to free movement under EU law. The EEA is wider than the EU and comprises all EU member states, plus Iceland, Liechtenstein and Norway.

EEA/Swiss nationals have the right to move within the EU as long as they are "qualified persons". This means that they are either employed or self-employed workers, job seekers, students, or self-sufficient persons. For their rights to free movement to be meaningful and be given full effect, however, it is necessary for these individuals to be entitled to be accompanied by certain family members. Family members with the strongest rights are children under twenty-one (21), spouses/civil partners, and dependent parents and grandparents. These family members enjoy rights of residence in the EU country where the relevant EEA/Swiss national is exercising their right of free movement. Importantly, they also enjoy the right to work in the United Kingdom.

Following five (5) years of continuous residence, EEA/Swiss nationals and their family members automatically acquire permanent residence, which is akin to the "Indefinite Leave to Remain" status available for non-Europeans, whereby individuals may reside in the United Kingdom in any capacity, as well as have access to public funds and services provided they do not leave the country for more than two (2) years.

A key principle is that residence documents obtained under EU law do not confer rights on individuals, but simply confirm existing rights. Amidst the uncertainty caused by the EU referendum, however, EEA/Swiss nationals have increasingly sought to obtain these documents to secure their position.

Post-Brexit: What next for EEA/Swiss nationals in the United Kingdom?

On 26 June 2017, the government published a proposal whereby those who arrived in the United Kingdom before a "specified date" would be able to apply for settled status once they accrued five (5) years of continuous residence. Those who have arrived before the specified date but have not yet accrued five (5) years of continuous residence would be able to remain until they reach this five (5) year target. There would also be

a grace period of two (2) years after the United Kingdom exits the EU during which EU nationals will be able to apply for necessary documentation.

Those who arrive in the United Kingdom before Brexit but after the specified date would be allowed to remain in the United Kingdom for a temporary grace period, with their status afterwards depending on the rules in place at that time. Of frustration to those who have already secured permanent residence status under EU law is the fact that, under the proposal, these individuals will have to apply again for settled status following Brexit.

It is clear that should the above proposal be implemented, the status of many EU nationals in the United Kingdom will hinge on the "specified date" chosen by the government. This may be any point between the date of the referendum and the United Kingdom's departure from the EU. It is important to bear in mind, however, that the proposal is an offer made by the UK in its on-going negotiations with the EU. It currently holds no legal weight, and it would be prudent for EEA/Swiss nationals to continue consolidating their position in the United Kingdom in line with EU law (i.e. by obtaining a document confirming their permanent residence status) until the situation is further clarified.

COMPULSORY HEALTH INSURANCE COVERAGE REQUIREMENTS IN AUSTRIAN IMMIGRATION

By Sabine Straka
Sabine is based in Vienna, Austria and is an Associate Lawyer at Law Office Straka.

All foreign employees seeking Austrian residence permits must hold health insurance coverage providing all-risk coverage in Austria per Article 11(2) of the Austrian Establishment and Residence Act.

This requirement applies to applicants for all types of residence permits.

In Austria, virtually all individuals (99.9% of the population) receive publicly funded health care[1]. Most Austrians are automatically insured when they are gainfully employed, receiving unemployment benefits or pensions. Dependent family members will in most cases be covered by the health insurance of the employed family member.

Foreigners who apply for a residence permit so that they can work for an Austrian employer will become part of this compulsory social insurance scheme automatically. This is confirmed in their work contracts. For these individuals, the work contract serves as sufficient proof of health insurance coverage for immigration purposes.

[1] https://www.bmgf.gv.at/home/Suchergebnis?begriff=the+austrian+health+care+system+key+facts

Foreign employees who are not employed by an Austrian employer have a more difficult time providing proof of compulsory health insurance. Included in this latter group are financially independent persons, students, posted workers, and rotational employees.

Since January 2017, there have been changes in government policies that were triggered by two (2) key High Court decisions[2]. The High Court decisions in question dealt with a court claim submitted by the Municipal City of Vienna as owner of a hospital against the Republic of Austria for reimbursement of health care costs.

Vienna's claim was based on unlawful issuance of a residence permit to a person with insufficient health insurance coverage. The Austrian High Court of Administration confirmed the unlawfulness of the granted residence permit in question because of the wide range of exclusions of benefits of risks[3].

Previously, immigration authorities accepted all kinds of private health insurance, foreign insurance, and sometimes even travel insurance.

We have observed significant delays in immigration proceedings in the months following the High Court ruling as administrative authorities interpret the Court's decisions. When in doubt, the authorities have routinely denied residence permit applications with insufficient health insurance coverage.

Practitioners should watch out for these most common risks usually not covered by health insurance but clearly insufficient for immigration purposes:

- Accidents and illnesses that have already occurred before the commencement of insurance coverage;
- Accidents and illnesses based on intent, including suicide and attempted suicide, as well as addiction or abuse of alcohol, drugs etc.;
- Accidents and illnesses based on intentional or negligent involvement in criminal activities, brawls, and other acts of violence; and
- Accommodation because of individuals endangering themselves or others.

Rotational employees, posted workers, or independent private persons, who are not covered by Austrian compulsory public health insurance, will need to obtain additional insurance coverage or seek additional coverage letters so that they can comply with the new mandatory health insurance requirements.

WILL NEW BRAZILIAN MIGRATION LAWS LEAD TO PRACTICAL IMMIGRATION SOLUTIONS?

By Raquel F. Burson
Raquel is a Brazilian-U.S. licensed attorney who works for Foster LLP in Austin, Texas.

As a Brazilian Attorney, I look forward to reviewing how Brazil's new immigration laws will be implemented in practice. The new law was promulgated on 24 May 2017 and is slated to take effect on 21 November 2017. Once it is in force, it is expected that Brazilian consular posts around the world will adopt less bureaucratic procedures for visa adjudications, especially for those who already have a family member living in the

[2] https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Justiz&Dokumentnummer=JJT_20150618_OGH0002_0010OB00074_15M0000_000

[3] https://www.vwgh.gv.at/rechtsprechung/aktuelle_entscheidungen/2017/fe_2015220001.pdf?61pgbj

country. Additionally, Article nine (9) in the new regulations requires the simplification of the visa application process and admission procedures in Brazil.

Electronic Visas: New Technology

The new law also establishes the use of electronic visas, which have not previously been a part of the immigration process in Brazil. Presently, Brazilian visa applicants are required to physically surrender their passports to a Brazilian consular post and receive a visa sticker in their passports. The issuance of a Brazilian visa sticker may take a few days or even weeks, depending on consular availability and the volume of visa requests. Electronic visas may facilitate travel for business travelers or rotational technical workers who have had to take care of visa needs well in advance of their travel plans. Frequent business travelers to Brazil often coordinate successive visa application processes so that they can ensure that they always will have a valid visa for the duration of an ongoing project in Brazil. The implementation of an electronic visa program should make the visa application process more streamlined and will allow applicants to maintain possession of their passports during the adjudication period.

Clear Travel Deadline for First Admission into Brazil

Currently, holders of temporary work visas who do not travel to Brazil immediately after issuance are often confused regarding the visa's validity. Separate from tourist and business visa stamps where the validity is counted from the date of issuance, the validity of temporary work visas begins on the first day the foreign national enters Brazil. People are often confused by the actual validity dates on their visas, and are concerned that the visa may no longer be valid for travel.

In an effort to address this issue, the Federal Police have established a uniform practice at ports-of-entry where a temporary visa stamp is deemed to be valid for one (1) year from the date of issuance for "activation" upon entry into Brazil. It is expected that upcoming regulations will specifically address this issue or adopt clearer counting methods for temporary visas. However, the goal of the new policy is to allow for more clarity in determining the validity period of Brazilian visas.

Travel Document While Visa Application Adjudication is Pending

Foreign nationals who are waiting for the final approval of an extension of a temporary visa upon arrival in Brazil currently receive a "protocol receipt" in the form of a white piece of paper stamped by the Ministry of Justice to serve as proof of legal stay and work authorization in Brazil.

Even though these individuals are technically allowed to travel internationally with this document, the protocol receipt is often not recognized by airlines as a valid travel document. In practice, individuals are often unable to travel using these receipts and are required to obtain a new visa stamp (typically tourist visas) to satisfy airline requirements. However, it is a significant additional cost and effort to obtain a new visa stamp and there also remains the possibility for entry into Brazil in the wrong immigration status if the individual is not able to explain that an extension of temporary status is pending approval upon arrival. The

new Migration Law references an "authorization of return" type document and leaves it open to authorities to create a document recognizable by both the Brazilian immigration and government authorities, as well as airlines, to solve this pending issue. Upon publication of regulations in the coming months, Brazilian immigration practitioners will be able to reassess whether securing a tourist visa as a practical solution to this travel issue will still be the best practical strategy to solve this document recognition problem.

MIGRATION OPTION POST-BREXIT: THE AUSTRALIAN BUSINESS TALENT VISA STREAM

By Edward Beshara, Professor Murray Gerkens, Professor Rodger Fernandez, and Sherene Ozyurek. Edward is the Managing Partner of the Beshara Global Migration Law Firm in Miami, Florida. Murray, Rodger, and Sherene are based in Carlton, Victoria, Australia, and work for FCG Legal Pty Ltd, Lawyers.

Immigration polices between the United Kingdom and European Union countries will change following Brexit and will require more restrictions in order to obtain the appropriate visa(s) to enter the respective country.

As a result of the uncertainty surrounding the procurement of visas for the United Kingdom and EU countries, people will look to immigration programs in other countries' for pursuing a predictable visa entry. Individuals who are now looking at landing outside of the United Kingdom or European Union countries may wish to consider pursuing migrating to Australia pursuant to the Business Talent Visa (class EA subclass 132).

The Business Talent visa (class EA sub class 132) is a permanent visa. If approved, a Business Talent visa holder will be entitled to obtain permanent residence in Australia immediately. Australia has a highly prescriptive visa regime and all applicants must satisfy the prescriptive requirements stipulated under the Migration Act 1958 (Cth) and the Migration Regulations 1994 (Cth). The visa is subdivided into two (2) streams:

- Significant Business History stream, and
- Venture Capital Entrepreneur stream.

This article will refer to the Venture Capital Entrepreneur Stream only.

The Australian Department of Immigration and Border Protection maintains a website listing a checklist for 132 visa applicants.[4] As a substantial number of Business Talent visa applicants are from the "Greater China region," the Australian Consulate General in Hong Kong has also prepared a checklist for the 132 visa for Hong Kong, PRC, Macau, and Taiwan applicants, which is also available on the Consulate General website.[5]

[4] http://www.avcal.com.au/

[5] *RCMP says it has intercepted 3,800 asylum seekers crossing illegally into Quebec since Aug. 1,* Canadian Broadcast Corporation (CBC), August 17, 2017, available at: http://www.cbc.ca/news/canada/montreal/rcmp-says-it-has-intercepted-3-800-asylum-seekers-crossing-illegally-into-quebec-since-aug-1-1.4250806.

Common Requirements

Applicants for the 132 visa must first submit an online Expression of Interest and wait for an invitation before they can formally apply. Once they receive an invitation, they have two (2) months to lodge a visa application. The application must be supported by a sponsorship from an Australian State/Territory government.

If the person does not fulfill the invitation's requirement to apply within the two (2) month period, the invitation will be withdrawn. The invitation will identify which particular stream the applicant is to apply under.

132 visa applicants may be in or outside Australia at the time of application, as well as at the time of decision. However, if an applicant is in Australia at the time of application, he/she must hold either

- a substantive visa, or
- a Bridging A (010), B (020), or C (030) visa.

Venture Capital Entrepreneur Stream

The Venture Capital Entrepreneur stream is intended for the entry of migrant entrepreneurs with high potential business ideas. Requirements for this visa stream are as follows, below.

- Applicants must have entered into a legally enforceable agreement to receive venture capital funding of at least AUD one (1) million from an Australian company that has Venture Capital Membership of the Australian Private Equity and Venture Capital Association Ltd (AVCAL)[6];
- AVCAL is the leading industry association that represents and promotes the long-term interests of the private equity and venture capital industries in Australia;
- The venture capital funding must have been provided for one of the following objectives in relation to a business in Australia;
  - Early phase start-up of the business,
  - Commercialisation of a product,
  - Development of the business, or
  - Expansion of the business.
- The nominating State/Territory is satisfied the applicant (and partner) have combined business and personal assets which are sufficient for settlement in Australia;
- They have a realistic commitment to:
  - Participate in Australia, as a substantial owner, in the management of a new or existing qualifying business which will benefit the Australian economy; and
  - Maintain direct and continuous involvement in the management of the business(es) on a day to day basis and make decisions affecting its direction and performance.

[6] 2016 Refugee Claim Data and IRB Member Recognition Rates, Canadian Council for Refugees, provided by Sean Rehaag, Associate Professor, Osgoode Hall Law School, available at: http://ccrweb.ca/en/2016-refugee-claim-data

- They (and partner) have no history of involvement in business or investment activities of a nature not acceptable in Australia; and
- There are no age or English language requirements for this stream, although applicants who do not have at least functional English will need to pay an English language charge before the visa is granted.

As a consequence of Brexit, the free movement of UK and EU nationals will end in 2019 with a temporary immigration process in effect until 2021, when a permanent immigration process will be implemented. Therefore, entrepreneurs from the United Kingdom and European Union can pursue a predictable permanent residency goal in Australia. Now is the time to start the application process. Processing times may take a substantial amount of time (months to years) and the filing of an immigrant petition will put the applicant in the waiting line.

REFUGEE CROSSINGS

By Aris Daghighian. Aris Daghighian is an Associate Attorney with Green and Spiegel LLP and an Executive Member of the Canadian Association of Refugee Lawyers (CARL). Aris is based in Toronto, Canada.

Since 1 June 2017, more than seven thousand (7,000) refugees have entered Canada from the United States by irregularly walking across the land border.[7] Most of these individuals are from Haiti and enter through Quebec, where there are multiple points by which they can enter without initial detection.

This sudden surge is widely believed to have been precipitated by the growing racial and anti-immigration tensions under the Trump administration. The shift in rhetoric has manifested in a general sense of unease, as well as more concrete policy consequences. Specifically, members of the Haitian diaspora in the United States have benefited from Temporary Protected Status (TPS), exempting them from deportation to their ravaged homeland after the catastrophic earthquake of 2010. Yet, this past summer, Secretary of Homeland Security John Kelly (now White House Chief of Staff) issued only a six (6) month limited TPS extension and warned that it would likely be the last.

Approximately 59,000 Haitians living in the United States over the last many years were affected by the decision and have looked elsewhere for refuge, leading them across our borders. But Canada may not provide the absolute protection they might expect. Ironically, Canada began the process of lifting its own temporary suspension on removals to Haiti as far back as 2014. In recent years, hundreds of Haitians have been removed from Canada alongside other deportees.

Out of the over four hundred (400) refugee claims from Haiti in 2016, approximately 52% were granted refugee protection by the Immigration and Refugee Board of Canada (IRB).[8] This means the other half of

[7] See Immigration and Refugee Protection Act (S.C. 2001, c. 27), ss. 96-97.

[8] See Immigration and Refugee Protection Act (S.C. 2001, c. 27), ss. 96-97.

claimants, barring any appeal, were issued departure orders and required to leave Canada within thirty (30) days or face further penalty.

In reality, obtaining refugee protection in Canada is far from a simple or over inclusive process. The IRB zealously applies the legal requirement that an individual's claim to protection must be a personalized risk that is not faced by the general population in their country of origin. That is to say, an individual must face persecution based on an enumerated ground (e.g. race, gender, political opinion) or face a risk to his/her life that is separate and apart from generally poor or unsafe conditions in his/her home nation.[9]

These requirements present a significant impediment for many Haitian refugees in particular, as many of them left Haiti following the devastating earthquake in 2010. However, natural disasters on their own are not among the grounds for which the IRB would consider granting refugee protection to a claimant under Canada's laws.[10]

While there is no simple solution to the current situation, there are a few practical steps that Canada can consider taking regardless of U.S. policy.

First, Canada can suspend the Safe Third Country Agreement (STCA). The STCA, of course, is an agreement between Canada and the United States. regarding how refugee claimants are handled along our shared land border. The agreement came into effect in 2004 and requires that refugees must seek protection in the first country they arrive. Notably, however, the agreement only applies to refugee claimants seeking entry to Canada from the United States at land border crossings by car, train, or on foot. It does not apply to those arriving by air. It also does not apply to those who are already inside Canada. It is for this reason that refugees from around the world have traditionally crossed into Canada surreptitiously instead of reporting themselves first at a border crossing.

Suspending the STCA may not dramatically reduce the number of claimants, but it would bring much needed stability and organization to the process.[11] Claimants could make formal applications at ports-of-entry across the country instead of concentrating on crossing through Quebec. Moreover, eligibility interviews and security screenings could be performed on the front-end before the claimants enter Canada. This decreases the fear of any security risks or of unknown numbers of individuals entering the country without being accounted for.

Pending these front-end determinations, claimants would be allowed to wait in the United States instead of being forced to live in tents and make-shift accommodations in Canada. If they are denied at this initial stage, they will be in the same position as they were before making their claim instead of facing removal in Canada.

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[9] It should be noted that many organizations and experts have called for the recognition of environmental refugees under international and domestic laws, given the growing environmental crises that may disproportionately affect certain parts of the world in the coming future.

[10] A number of organizations including CARL and the CCR have called for a suspension of the STCA over the last 12 months. In May 2017, Amnesty International and the CCR issued a comprehensive 54 page report on the need to suspend the STCA, available at: http://ccrweb.ca/sites/ccrweb.ca/files/stca-submission-2017.pdf.

[11] It should be noted that many organizations and experts have called for the recognition of environmental refugees under international and domestic laws, given the growing environmental crises that may disproportionately affect certain parts of the world in the coming future.

Notably, this is not just to the benefit of the claimants, but would alleviate much of the expense and logistical difficulties currently facing the Canadian government.

Second, with the assistance of immigration professionals and NGOs in the United States, we can ensure that refugees in the United States have an accurate understanding of the legal impediments and requirements they will face in Canada. The Canadian government should make clear through social media and news outlets that, while our rhetoric may be sunnier, our refugee determination process is rigorous and by no means guaranteed. Ultimately, future claimants would benefit greatly by speaking remotely with a qualified Canadian lawyer regarding all immigration options that may be available to them, prior to making the life-altering decision to leave their homes.

GOVERNMENT OF CANADA AMENDS THE CITIZENSHIP ACT

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Introduction

On June 19, 2017, Bill C-6, which proposed numerous amendments to the Canadian *Citizenship Act*[12], (R.S.C., 1985, c. C-29), received Royal Assent. Bill C-6 attempts to reverse many of the changes contained in the *Strengthening Canadian Citizenship Act*[13] (the "2014 Act"), which was enacted by the former Conservative Government back in 2014.

Many of the amendments described in Bill C-6 came into effect immediately on 1 June 2017. However, some changes are expected to come into effect later this year. Other changes are expected to come into effect in 2018.

A summary of the key provisions contained in Bill C-6 and their effective dates appears below.

Revocation of Canadian Citizenship for Reasons of National Security

Prior to Bill C-6, dual citizens who engaged in certain actions contrary to national security while holding Canadian citizenship could have had their Canadian citizenship revoked. This included convictions for treason, spying, and terrorism offenses (depending on the sentence received), and being part of an armed force of a country or organized group engaged in conflict with Canada **[Subsection 10(1)]**. This provision has now been repealed, effective June 19, 2017.

[12] http://laws-lois.justice.gc.ca/eng/acts/C-29/

[13] http://www.parl.ca/DocumentViewer/en/41-2/bill/C-24/royal-assent

Intention to Reside in Canada No Longer a Requirement

Prior to Bill C-6, applicants for Canadian citizenship were required to demonstrate that they intended to reside in Canada if their application was granted **[Paragraph 5(1)(c.1)]**. This provision has now been repealed, effective 19 June 2017.

Repeal of Minimum Age for Naturalization

Prior to Bill C-6, minors (persons under the age of 18) could not apply to naturalize as a Canadian citizen **[Paragraph 5(1)(b)]** without the support or consent of their parents. However, the Minister of Immigration, Refugees, and Citizenship still had the discretion to waive the requirement based on compassionate grounds **[Paragraph 5(3)(b)]**.

The age requirement for citizenship has now been repealed, as of 19 June 2017. Minors may now apply to naturalize as Canadian citizens without parental consent or requiring discretionary relief.

Reduction in the Required Period of Physical Presence

Prior to Bill C-6, in order to naturalize as Canadian citizens, applicants had to be physically present in Canada for 1,460 days [four (4) years] during the preceding six (6) years, be physically present in Canada at least one hundred and eighty-three (183) days during each of at least four (4) calendar years, and to have filed at least four (4) income tax returns during the preceding six (6) years **[Paragraph 5(1)(c)]**.

Under Bill C-6, applicants will only need to be physically present in Canada for at least one thousand and ninety-five (1,095) days [three (3) years) out of the preceding five (5) years. They must also have filed at least three (3) income tax returns instead of four (4) during the preceding five (5) years. There is no longer a requirement that applicants spend at least one hundred and eighty-three (183) days in Canada during each eligible calendar year. This amendment is expected to come into effect later this year.

Limiting the Requirement to Demonstrate Knowledge of Canada and its Official Languages

Prior to Bill C-6, applicants for naturalization who were between the ages of eighteen (18) and sixty-four (64) were required to demonstrate adequate knowledge of: (1) Canada and of the responsibilities and privileges of citizenship **[Subsection 5(d)]** and (2) one of Canada's official languages **[Subsection 5(e)]**.

Under Bill C-6, this requirement will only apply to applicants between the ages of eighteen (18) and fifty-four (54). This reinstates the applicable age that was in place prior to the 2014 Act. This amendment is also expected to come into effect later this year.

Counting Time Spent in Canada Prior to Obtaining Permanent Residence

Prior to Bill C-6, time spent in Canada prior to becoming a permanent resident did not count towards the physical presence requirement for Canadian citizenship **[Paragraph 5(1)(c)]**.

Under Bill C-6, every day that an applicant was physically present in Canada as a temporary resident or a protected person before becoming a permanent resident of Canada will be counted as half a day of physical presence for the purposes of citizenship, up to a maximum of 365 days. This more or less reinstates the method of calculation used prior to the 2014 Act. This is another amendment expected to come into effect later this year.

Authority to Seize Fraudulent or Improperly Obtained Documents

Prior to Bill C-6, there was no express authority for citizenship officers to seize fraudulently or improperly obtained documents provided in connection with the *Citizenship Act.*

Under Bill C-6, citizenship officers will be able to seize any document provided in connection with the *Citizenship Act,* if they have reason to believe that it was fraudulently or improperly obtained or used, or if it is necessary to prevent its fraudulent or improper use. This again is an amendment that is expected to come into effect in 2018.

Federal Court to Adjudicate All Revocation Cases

Prior to Bill C-6, the Minister of Immigration, Refugees and Citizenship Canada had the authority to revoke a person's citizenship or renunciation of citizenship if they obtained, retained, renounced, or resumed their citizenship by false representation or fraud or by knowingly concealing material circumstances **[Subsection 10(1)]**. The Federal Court had jurisdiction to adjudicate such cases only when they involved security grounds, human or international right violations, and organized criminality **[Subsection 10.1(1)]**.

Under Bill C-6, the Federal Court will have jurisdiction to adjudicate all revocation cases, unless the individual requests that the Minister of Immigration, Refugees and Citizenship make the decision. This amendment is expected to come into effect in 2018.

Conclusion

While Bill C-6 does not represent a complete repeal of the 2014 Act, it eases many of the key eligibility requirements for citizenship, including the physical presence requirement and the requirement to demonstrate knowledge of Canada and its official languages. Bill C-6 also eliminates some of the more controversial elements of the 2014 Act, including the ability to revoke the Canadian citizenship of dual nationals based on national security grounds.

REGULATIONS ON LABOR FORCE MOBILITY IN ROMANIA

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Although it has been over ten (10) years since Romania joined the European Union (EU), Romanian employers still face many uncertainties and practical difficulties when dealing with employment, social security, and immigration requirements for posting EU citizens or third country, non-EU nationals in Romania. According to a recent survey published by the Romanian National Council of Small and Medium-Sized Private Enterprises, EU posting procedures were found to be bureaucratic, lengthy, and costly, while non-EU-related assignments were found to be even more challenging and time-consuming.

Here is a brief procedural and legislative overview relating to European Directives transposed into the Romanian national legislation, as it relates to assignments of EU and non-EU workers:

EU Assignments

- Directive 96/71/EC, which deals with posting of workers, was transposed into Romanian legislation by Law No. 344 on 19 July 2006, with an effective date of 1 January 2007, the date of the Romanian accession to the European Union.
- In 2014, the European Union approved Enforcement Directive 2014/67/EU, with the aim to strengthen the practical application of the 96/71/EC Directive, and which was required to be transposed into the national legislation by each Member State by 18 June 2016.
- On 16 June 2016 Romania approved a law project of transposing the 2014/67/EU Directive into national legislation.
- On 20 May 2017, Law No. 16/2017 entered in force. This law concerns the posting of workers in the framework of the provisions of services and its methodological norms. On the same day Law No. 344/2006 was abrogated.

Non-EU Assignments to Romania

- Directive 2014/66/EU, which deals with entry and residence requirements for third country nationals, within the intra-company transfers framework, was required to be transposed into the national legislation by each Member State by 29 November 2016.
- In September 2016, Romania adopted Government Ordinance (O.G.) No. 25/2016, which modifies O.G. no. 25/2014, relating to work and posting of foreign workers on Romanian territory, and O.U.G. No. 194/2002, relating to the regime of foreigners in Romania. These legislative modifications transposed into national legislation, the provisions of Directive 2014/66/UE and Directive 2014/36/UE, which deals with entry and residence requirements for seasonal third country national workers.

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