The Corporate Immigration Review

Third Edition

Editor
Chris Magrath

Law Business Research

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EDITOR'S PREFACE

Since the publication of the second edition of *The Corporate Immigration Review* a year ago, the trends that we saw emerging then have accelerated. The polarisation between the increasingly restrictive immigration policies of, largely, developed Western nations, contrasted with, largely, the more liberal immigration policies in the developing world has become more marked. The ongoing crisis within the eurozone, coupled with the continuing unpopularity of governments in the most seriously affected countries, have persuaded European politicians that there is a short-term electoral advantage to be gained by embracing anti-immigration rhetoric.

The United Kingdom is a classic example of this tendency. It would appear that the only topic on which all of the major political parties agree is that 'unrestricted immigration' is a bad thing, and that, in consequence, 'highly restricted immigration policies' are a good thing. As the economy in the United Kingdom shows little sign of growth, political leaders have persuaded themselves that restricting the flow of overseas labour is, if nothing else, a means of deflecting from their own economic failures.

Similar trends can be seen in countries whose economic straits are even more dire, such as Spain, Italy and Greece, and whose problems require no further analysis.

It is not a paradox that Germany, which is the most successful eurozone economy by some margin, has neither imposed immigration quotas, nor restricted its immigration options, in the corporate arena. Indeed, perhaps this is merely a recognition by Germany that restrictive immigration policies are a dead-end street that do little, or nothing, to assist its finances or corporate attractiveness.

The United States is also bucking the trend – the current Border, Security, Economic Opportunity and Immigration Modernisation Act, introduced in April 2013 in the US Senate by eight senators from both parties, is an effort to create a bipartisan solution to an increasingly dysfunctional immigration system. At the time of writing, there are estimated to be as many as 11 million 'undocumented aliens' in the United States, which issue requires urgent remedial action.

Notwithstanding the continuing economic problems of the United States, there is an increasing demand for highly skilled overseas labour. The current immigration cap

on H-1B visas (the standard professional working visa) of 65,000 annually was reached within five days of this visa category becoming available for the 2013–2014 'immigration year'. It is therefore likely that Congress will legislate to increase the cap to ensure that the US economy is not adversely affected by a shortage of suitably skilled workers.

Immigration in the developing world, however, continues to rise – primarily in the business and employment sectors. In the Far East, China and Hong Kong maintain a liberal and open immigration policy towards businesses, investors and professionals who wish to invest and work there, and policies have been put in place to attract talent and capital from overseas. Business visitors alone to China have increased tenfold in the last decade.

The UAE actively encourages skilled migrants and has put in place a series of incentives to attract expatriates. Currently it is estimated that 80 per cent of people living in the UAE are foreign-born.

Turning to South America, where market growth is well documented, economic migration shows an upward trend. Both Brazil and Chile welcome foreign migrants, and recognise the skills and financial benefits that such individuals will undoubtedly contribute to their economies.

Mexico is involved in negotiations with a view to introducing a Central American visa, which will encourage free movement within the region in much the same way that the Schengen Agreement operates in Europe.

While it is almost inevitable that growing economies will wish to attract a skilled workforce from any source, it is depressing that countries with little or no economic growth take the view that an appropriate response is to restrict immigration. This is an error and is borne primarily out of prejudice rather than fact. On every aspect of immigration, the UK population is the most negative in Europe with the exception of Greece. While France has historically been regarded as somewhat xenophobic, it is interesting that only 41 per cent of the population in France believe that migrants take jobs from them, compared with 62 per cent of the British population.

Statistically, there is little doubt that migrants constitute a major benefit to most economies. The argument that 'migrants take new jobs' is a fallacy, and Oxford University's Migration Observatory concludes that all that can be said to support this argument is that migrants account for 16 per cent of newly hired people. Their report, however, went on to say that its authors were not certain whether migrants were performing newly created jobs or not, and also did not know whether these jobs would exist if the migrants were not there. Migrants are less likely to occupy social housing than those born in the UK and, as far as services and benefits are concerned, statistics show that citizens of the 10 countries that acceded to the EU in 2004 have been net contributors to the exchequer in the UK, by paying more in taxes than they have taken out in services.

Looking at these arguments in a holistic manner strongly suggests that countries that apply restrictive immigration policies, such as the UK, Spain and France, are less likely to see their economies grow and prosper than those countries that adopt a more liberal approach. Even if this conclusion is too simplistic, it underscores the need for the immigration debate to be conducted on a more rational and mature level than, generally, Western politicians have shown themselves capable of during the past year.

We again thank the contributors to this third edition of *The Corporate Immigration Review*. Their expertise and knowledge of their jurisdictions have enabled this publication

to become a major resource for those of us who practise within the global immigration arena. In 2014 we shall be adding chapters from other countries with a view to ensuring that *The Corporate Immigration Review* becomes the standard global immigration text.

Chris Magrath and Ben Sheldrick
Magrath LLP
London
May 2013

Chapter 15

ISRAEL

Tsvi Kan-Tor, Amit Acco and Yoav Noy[1]

I INTRODUCTION TO THE IMMIGRATION FRAMEWORK

Israel is the world's only predominantly Jewish state, with a population of 7.6 million people, of whom 5.7 million are Jewish. Arab citizens of Israel form the country's second-largest ethnic group, which includes Muslims, Christians and Druze. As of 2013, Arab citizens of Israel comprise just over 20 per cent of the country's total population.

Israel has no written Constitution. The Basic Laws, however, function as an unwritten Constitution, and in 2003, the Knesset began to draft an official Constitution based on these laws.

Israel's legal system combines English common law, civil law and Jewish law. It is based on the principle of precedent and is an adversarial system, whereby the parties in the suit bring evidence before the court. Court cases are decided by professional judges rather than juries.

According to Israel's Central Bureau of Statistics, Israel's current population count (in 2011) stands at 7.6 million people, of which only 3 million are part of the labour force.

The number of foreign employees in Israel reached its highest peak of between 250,000 and 300,000 workers in 2002. (This represents almost 10 per cent of the current labour force.)

The Israeli government, fearing an imbalance in the workforce, enacted legislation with the aim of protecting the local labour market, and in 2002 published a policy of issuing no new permits to new foreign employees. According to this policy, dubbed the 'closed skies' policy, companies are obliged to fill the employment quotas with workers already in Israel, rather than relocating employees from overseas.

1 Tsvi Kan-Tor is the managing partner, Amit Acco a founding partner and Yoav Noy a senior associate at Kan-Tor & Acco.

This restriction, however, affects only blue-collar workers. Israel was able to discern the ongoing need to invite foreign experts into the country in order to facilitate knowledge and know-how transfer, both of which are vital for the development of the Israeli economy.

Thus, despite the 'closed skies' policy still being in effect, work permits are being issued to foreign experts, thereby allowing Israeli and multinational employers to relocate key managers and experts to Israel for the purposes of research, development, specific projects, rollouts, senior positions, etc.

i Legislation and policy

Israeli immigration laws are based on several pieces of legislation and court decisions that govern all issues of naturalisation and family reunion, as well as the entry and employment of foreign nationals.

The Law of Return is the most significant piece of legislation, giving Jews, defined as those of Jewish ancestry, Jewish converts and their spouses the right to migrate to and settle in Israel and gain instant citizenship. Other governing laws are the Entry into Israel Law, the Citizenship Law and the Foreign Employees Law.

The Foreign Employees Law governs and regulates all aspects of employment of foreign nationals in Israel, both manual work (blue-collar) and foreign experts (white-collar). The Law and its regulation determine the permissible periods of work in Israel, permitted industries, terms of employment, enforcement measures and penalties for illegal employment.

It is the employer's responsibility to abide by these statutory provisions. Employment of foreign nationals without a valid visa is a criminal offence and subjects the employer to heavy penalties, including imprisonment. Moreover, an individual found to be working without a valid work visa is subject to deportation from Israel at the expense of the employer.

The Knesset has appointed a special committee that will provide recommendations on the formation of a new immigration policy in Israel, and will tackle not only the above-mentioned challenges, but will further deal with:

a entry permits into Israel;
b residency-related issues in Israel;
c legal versus illegal foreign workers;
d arrest and deportation of illegal foreign workers;
e work permits and placement into the following fields – construction, nursing, agriculture, manufacturing and the ethnic restaurants industry; and
f social requirements, including health, welfare, education, and access to various authorities and organisations.

The Israeli labour legal code contains extensive protective legislation, providing minimal rights for every worker in Israel, local or foreign.

As stated in the Foreign Workers Law, the protective legislation in Israel applies equally to migrant and local workers. This includes the collective agreements and extension mandates. It is forbidden by law for an employer to discriminate against a migrant worker and deny him or her these rights.

In addition to the general protective legislation, foreign employees are also entitled to receive a written contract of employment in the foreign employee's native language, adequate housing and health insurance. Terms and conditions for these unique rights are listed in specific regulations.

In 1991 the Knesset passed the Foreign Workers Law (Unlawful Employment and the Guarantee of Decent Conditions), which was amended in 2000. The purpose of this Law is to guarantee that foreign workers obtain their rights under protective labour legislation and to compel employers to provide foreign employees with decent employment conditions.

Employers are obliged to provide the employee with a written contract specifying the precise employment terms and conditions. Limits were placed on the expenses employers can compel workers to pay for housing. Employers are required to contribute a percentage of the migrant worker's wages to a government fund that will grant them certain social benefits, including social welfare benefits. The law encourages employers to sign collective agreements regulating working conditions of migrant workers.

ii The immigration authorities

During 2008 and 2009, the Israeli government established a new government agency – the National Immigration Authority ('the NIA') – to centralise the enforcement of immigration policy and border control. The NIA is responsible for the issuance of work visas and permits to foreign nationals.

The NIA currently facilitates information-sharing between the Ministry of Interior ('the MOI'), the Israel Police and the Israeli Defence Forces & Border Control to identify unauthorised foreign nationals and asylum seekers through a national computer grid. The NIA also enables information-sharing within the agency and with other governmental bodies.

Unauthorised employment of any foreign national constitutes a criminal offence and may lead to harsh sanctions on the foreign expert, employer and its management. These sanctions may include heavy fines or, in some cases, imprisonment. In recent years, an effort has been made to promote stricter legislation pertaining to illegal employment of migrant workers, as well as to improve the enforcement of these laws by the Ministry of Industry, Trade and Labour. The following applies to both foreign experts and to other migrant workers.

Fines and imprisonment

The Foreign Workers Law states that any individual who employs an unauthorised migrant worker, in terms of the Entry to Israel Law, or employs a migrant worker without all the required permits, faces a fine of over $10,000 for each worker (or a fixed administrative fine of over $2,000 per worker). The employer is also liable to a fine of over $1,000 for each day the migrant worker is illegally employed (or a fixed administrative fine equalling $900 per day). Fines may well be higher, and penalties can also include one year's imprisonment for such an employer.

Employers and managers convicted of employing illegal migrant workers or for repeated offences may be found guilty of a severe criminal offence. In recent years, illegal employers of migrant workers have been punished with increasing severity, and

indicted more often rather than being administratively fined. The company itself may be blacklisted, with the effect of not being able to sponsor future applications for work permits and visas.

Detention and deportation of migrant workers

A foreign national working illegally in Israel is in violation of the law. The individual may be detained and deported by the immigration police.

Additional consequences

The detention or deportation of a foreign national following illegal employment in Israel may also affect the relationship between the foreign national and the employer. A foreign national deported from Israel will be prohibited from entering the country for a number of years, for any purpose whatsoever (i.e., not limited to work). Furthermore, they may face substantial difficulties in obtaining visas to other countries, such as the United States, due to the fact that their record will be blemished with an immigration offence.

This situation may expose the company that has employed the expert, as well as its management, to a claim for compensatory damages on behalf of the expert whose career suffers damages. There have been several such instances.

New penalties for unlawful employment effective from 2010

Under the new rules, companies and their officers are subject to a range of civil and criminal penalties for violations of Israeli immigration law. Companies found to have hired foreign nationals unlawfully will have their names published on the government's website and be subject to fines of at least 25,000 shekels for every worker hired unlawfully. In addition, all foreign employees of companies found to be non-compliant will have their work permits and visas revoked, and will be required to depart from the country.

iii Exemptions and favoured industries

Israeli law does not provide exemption from the need to obtain a pre-entry work visa for specific countries or industries. In some specific contracts for the Ministry of Defence, a waiver of the work permit authorisation may be granted.

II INTERNATIONAL TREATY OBLIGATIONS

Israel does not have any bilateral agreements on short-term employment, and therefore any foreign national needs to obtain a pre-entry work visa; however, Israel has many bilateral agreements on visa waiver for visitors for a period of up to 90 days. Within this period, the visitors will not be allowed to engage in any work. Similar bilateral treaties were signed recently by Israel with Russia and Ukraine.

Israel, a signatory member of the World Trade Organization and a partner in the General Agreement on Trade in Services ('GATS'), is committed to allowing managers and executives (as defined by GATS) of foreign multinational corporations to enter the country in order to take part in foreign-investment projects, subject to the obtaining of a valid work visa.

III THE YEAR IN REVIEW

Over the past seven years (2006–2013), between 30,000 and 40,000 asylum seekers and labour immigrants have entered Israel. These immigrants entered the country illegally through the porous southern border with Egypt, mainly from Eritrea and Sudan. Most claim to be asylum seekers, and they present the country with huge challenges. In 2011, only eight of the 990 foreigners who applied for asylum in Israel were actually granted it.

The growing number of people crossing the border illegally poses a dilemma for the Israeli government, as many fear that an 'open gates' policy may lead to an unwanted change of the delicate *status quo* in the already tense national demographic. At the start of 2013, this massive illegal immigration has almost come to an end with the completion of a border fence between Israel and Egypt, a massive project begun during 2011, with a budget of 1.35 billion shekels. In addition, Israel is building the world's largest detention centre for asylum seekers. The facility is being built on 250 acres of the Negev sand dunes at the Ketziot prison, and currently is only partly occupied.

During 2011, the Israeli government announced that new measures will be published requiring employers that sponsor foreign workers to seek prior approval from the Israeli authorities both for the specific activities that their foreign employees will undertake in Israel and for the geographic locations within Israel where they will perform those activities. Foreign nationals working outside of their pre-authorised field or location would become subject to deportation. During 2012, the number of criminal charges made against corporate managers (as opposed to administrative fines only) has again risen dramatically. This is part of the government's ongoing policy to fight illegal employment in Israel while protecting the local labour market.

The new measures will impose harsher penalties on employers and other persons who assist unauthorised foreign workers in Israel. To that end, the new measures will also grant the NIA the right to request a court warrant to enter private premises (e.g., company offices) if required to detect the unlawful employment of foreign nationals in Israel, or to locate individuals who violate the Israeli immigration and labour laws. The exact implementation date for these measures is not yet known. Fragomen is monitoring these developments and will issue a client alert when an implementation date is announced.

The Israeli MOI is continuing to maintain a policy started during 2010 of not accepting applications to sponsor foreign nationals to work in the areas controlled partially or fully by the Palestinian authorities (known as areas 'A' and 'B'). The Ministry has clarified that employers may still sponsor foreign nationals to work in areas A and B; however, applications must be submitted to the Minhal Ezrahi (i.e., the civil administrative body responsible for the administration of areas A and B). Foreign nationals seeking to visit areas A and B may still apply to the MOI for a tourist visa; however, as tourists, they are strictly prohibited from engaging in any productive work in Israel.

IV EMPLOYER SPONSORSHIP

A foreign national who has been assigned to work in Israel must obtain a work permit and an appropriate entry visa prior to entering Israel. Israeli law generally provides for only one type of work status relating to the employment of foreign professionals and non-professionals alike: the B-1 visa category.

An Israeli employer (or a well-known global foreign company) must be the official sponsor of a work permit application. There is no separate category or provision for a self-employment working permit.

i Work permits

The process for obtaining a B-1 visa includes four separate bureaucratic steps:

a submissions of a work permit application with the Semech Unit operated by the MOI;

b filing of a subsequent visa application;

c issuance of a short-term single entry B-1 visa at the relevant Israeli consular post abroad prior to entry into Israel; and

d extension of the B-1 visa at the MOI after arrival in Israel, and obtaining a multiple entry visa for the entire B-1 approval period.

First step: work permit application

An Israeli employer (or a well-known global foreign company) must be the official sponsor of a work permit application. There is no separate category or provision for a self-employment working permit. A work permit application must contain a detailed description of the job position offered and also provide complete details relating to the prospective employee, including educational background, professional experience, proposed salary in Israel, local hiring efforts made, etc. Processing times for work permit applications currently range from four to eight weeks.

If the application is approved, the Semech Unit will issue a B-1 recommendation letter to the MOI.

Second and third steps: visa application and consular processing

Upon issuance of the Semech Unit recommendation letter, an application should be filed with the MOI, asking that it instruct the relevant Israeli consular post abroad to issue a B-1 work visa to the foreign national. Processing times for this short-term single entry notice currently range from two to four weeks.

Under the MOI regulations, short-term single entry B-1 visas must be sought at the consulate prior to entry into Israel, as petitions for B-1 visa classification cannot be made by way of change of status.

Fourth step: visa extension in Israel

Following entry into Israel, an application for a new long-term multiple entry B-1 visa stamp for an extended validity period (up to one year) must be processed at the local MOI. This last step should be completed as soon as the individual arrives in Israel, and prior to any departure.

Any departure from Israel on the basis of the short-term single entry visa will cancel the applicant's B-1 visa obtained at the consulate, and will require reprocessing of the visa at the consulate.

Short-term expedited process ('STEP')

This process is for work permit applications submitted for foreign nationals seeking to enter Israel for up to 90 days to perform duties such as technical work activities. Work

permit applications submitted under STEP are not subject to the normal prevailing wage obligations and also enjoy expedited processing.

Both foreign and Israeli companies can sponsor a foreign national under STEP. To take advantage of STEP, the foreign national must possess unique knowledge and expertise that is relevant to the proposed activities.

Family members of the foreign expert (for both STEP and one-year visa)

Generally, the MOI does not grant family members of migrant workers permission to enter and stay in Israel; however, in most cases, the MOI will make an exception to this policy for foreign experts and their families. Currently, in most cases where a foreign expert is granted a B-1 visa, the spouse (either married or not) and children (if any) will be granted a B-2 tourist visa. This is at the discretion of the MOI official processing the application. The justification for this exception lies in the foreign experts' special qualities – their relatively small numbers compared to non-professional migrant workers, their low motivation to remain in Israel permanently, their significant contribution to the Israeli economy and the high wages they are paid – and, in addition, Israel's obligations under international agreements.

The B-2 visa granted to family members is tied to the expert visa, meaning it is only valid while the foreign expert is still employed in Israel. Furthermore, any family member staying in Israel under a B-2 visa is strictly prohibited from being employed in any way during their stay. Accordingly, any family member performing work in Israel without permission will risk detainment or even deportation, and may not be allowed to return to Israel for several years. A family member will only be allowed to be employed in Israel legally where their prospective employer sponsors and obtains a work visa for them. In order to convert the dependent visa, the family member would be required to leave Israel and have a new employment visa issued in the relevant Israeli consulate abroad. Under the dependent B-2 visa, the expert's children will be allowed to study in school while in Israel.

ii Labour market regulation

The NIA requires that the hiring of a foreign worker will not adversely affect the wages and working conditions of Israeli employees comparably employed. To comply with the regulations, the NIA requires that the wages offered to a foreign expert must be double the Israeli average salary.

The requirement to pay prevailing wages as a minimum is valid for proposed employment under the foreign expert's category. Other categories (construction, agriculture, health care, etc.) do not require payment of a prevailing wage. In addition, the foreign expert category requires that the individual will possess unique knowledge and know-how that is not available or is rare in the Israeli market.

An additional measure to protect the labour market is the restriction on the length of work visas, which are valid for a maximum period of up to five years and three months from the date of first issuance. It is irrelevant whether or not the individual worked in Israel during the past five years. In exceptional cases, a special application to extend the visa beyond five years and three months can be submitted. The application will be reviewed by the MOI and the Ministry of Industry, Trade and Labour. Following the

approval of this special application, the work visa extension will be issued by the MOI in the employee's passport.

iii Rights and duties of sponsored employees

The foreign employee may work only for the sponsoring employer, pursuant to the terms and conditions of the approved petition. The terms and conditions of employment, such as salary, accommodation and health insurance, must comply with relevant labour laws and regulations. In addition, under Israeli employment law the sponsored employee must:

a carry out the tasks required to the satisfaction of his or her employer;

b perform the job to the best of his or her ability;

c perform the work wherever the employer directs and during the agreed working hours;

d maintain the interests of the employer, and not act in breach of confidence or violate discipline;

e maintain confidentiality of the employer's information during and after the employment period (such information includes specifications, secret information, knowledge, formulae, financial data, customer information, and all other information that is the property of the employer and does not belong to the public);

f warn the employer of possible harm against the legitimate interests of the employer that have come to the attention of the employee; and

g comply with the law on commercial misconduct that outlines the infractions and measures of enforcement on commercial confidentiality. It is important to note that recent decisions of the labour courts and regular courts on the subject of confidentiality and non-competency reduced the legal protection of the employer, covering commercial secrets as well as possible damage to the previous employer due to the activities of the employee in the new employer business or its own business.

V INVESTORS, SKILLED MIGRANTS AND ENTREPRENEURS

Israel does not have special programmes to attract investors, skilled migrants and entrepreneurs. An Israeli employer (or a well-known global foreign company) must be the official sponsor of a work permit application. There is no separate category or provision for a self-employment working permit.

During 2012, the United States announced that the E-2 investor visa will be applicable to Israeli nationals, pending reciprocity of the same visa to be implemented to US nationals wishing to invest and work in Israel. The Israeli Ministry of Interior is now regulating such investor visa, and it seems that it will be applicable to US nationals only.

VI OUTLOOK AND CONCLUSIONS

In most cases, it is possible for an expert to receive a work permit in Israel within a reasonable amount of time and without inordinate effort, and working without the required work permit is not worth the risk. It must be emphasised that there is no 'grace

period' for working in Israel, and foreign experts must hold a valid work permit before they start working.

In Israel (as elsewhere), the law, regulations and enforcement continue to become harsher, and can include financial penalties and blacklisting against companies, deportation against employees, and imprisonment and fines against local managers.

The transfer of responsibilities regarding foreign citizens from seven government offices to a single professional authority has improved most aspects of the corporate immigration regime.

Appendix 1

ABOUT THE AUTHORS

TSVI KAN-TOR

Kan-Tor & Acco

Tsvi Kan-Tor is the managing partner of the highly rated Kan-Tor & Acco corporate immigration law firm in Ramat Gan, Israel.

Mr Kan-Tor has practised migration and nationality law since 1992. He has diverse experience in representing all business sectors, from multinational Israeli-based companies to start-ups, in the industrial, financial, oil and gas, engineering, infrastructure, entertainment, sports and business sectors, in all their needs for work permit and visa issues.

In 2007, together with his colleague, Amit Acco, Mr Kan-Tor published the first book on corporate relocation to Israel.

Mr Kan-Tor graduated from Tel Aviv University in 1982 and has been a member of the Israeli Bar since 1984.

AMIT ACCO

Kan-Tor & Acco

Amit Acco is a founding partner of the highly rated Kan-Tor & Acco corporate immigration law firm in Ramat Gan, Israel.

Mr Acco has practised immigration and nationality law since 2000 and heads the firm's Israeli immigration law department.

Mr Acco's practice division consists of a unique and strong international client base in the local and multinational high-tech, semiconductor, banking, transportation, oil and gas, and business consultancy industries. Representing high-tech and IT, Mr Acco combines a high level of technical know-how and expertise.

Mr Acco is a member of the Committee of Foreign Workers of the Israel Bar Association, responsible for leading legislative and policy activities with regard to the entry of foreign experts to Israel.

In 2007, together with his colleague, Tsvi Kan-Tor, Mr Acco published the first legal handbook on corporate relocation of foreign experts into Israel.

In 2001, together with Mr Kan-Tor, Mr Acco gave professional testimony to the Buchris Committee of the Israeli Parliament that later created the category of work permits for foreign experts in Israel.

Mr Acco holds an LLB honours degree from the Faculty of Law of Thames Valley University, London.

YOAV NOY

Kan-Tor & Acco

Yoav Noy is a senior associate of the highly rated Kan-Tor & Acco corporate immigration law firm in Ramat Gan, Israel.

Mr Noy has practised immigration and nationality law since 2005 and is a legal team leader at the firm's Israeli immigration law department, representing all business sectors in all their needs for work permit and visa issues.

Mr Noy is a member of the Israel Bar Association.

Mr Noy holds an LLB degree from the Faculty of Law of the College of Management, in Israel.

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