

## Chapter XX

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# ISRAEL

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### I INTRODUCTION TO THE IMMIGRATION FRAMEWORK

Israel is the world's only predominantly Jewish state, with a population of 8.3 million people, of whom 6 million are Jewish. Arab citizens of Israel form the country's second-largest ethnic group, which includes Muslims, Christians and Druze. As of 2016, 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, only 3.9 million people in Israel 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.<sup>2</sup> In 2015, the number of foreign employees in Israel totalled 94,000 not including 91,000 illegal tourists, a great part of whom are suspected to be working illegally.

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.

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2 This represents almost 8 per cent of the current labour force.

This restriction, however, affects only blue-collar workers. Israel was able to discern the ongoing need to invite foreign experts into the country 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 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, roll-outs, 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 regulations 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 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 Population Immigration and Border Authority (PIBA) – to centralise the enforcement of immigration policy and border control. PIBA is responsible for the issuance of work visas and permits to foreign nationals.

The PIBA currently facilitates information sharing between the Ministry of Interior (MOI), the Israel Police and the Israeli Defence Forces and Israel Border Police to identify unauthorised foreign nationals and asylum seekers through a national computer grid. PIBA 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 both to 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 US\$10,000 for each worker (or a fixed administrative fine of over US\$2,000 per worker). The employer is also liable to a fine of over US\$1,000 for each day the migrant worker is illegally employed (or a fixed administrative fine equalling US\$900 per day). Fines that are calculated for each day of violating the law 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. During 2015, approximately 700 foreign nationals who were working illegally were deported from Israel.<sup>3</sup> Also in 2015, around 3,360 persons were deported from Israel for illegal stay, the total administrative fines amounting to an estimated 12.8 million shekels and 150 criminal verdicts with total fines of more than 6.4 million shekels approximately.<sup>4</sup>

### *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 Israel for 10 years, for any purpose

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3 According to the Southern District enforcement agency at the Population and Immigration Authority, 2015.

4 According to PIBA publications for 2015.

whatsoever (i.e., not limited to work). Furthermore, they may face substantial difficulties in obtaining visas to other countries, such as the United States, because of the fact that their record is tarnished 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 damage. There have been several such instances.

### **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**

A new agreement between Israel and Australia allows 500 young people (aged between 18 and 30 years old) to obtain a work permit during their gap year. Under the new arrangement, holders of a work visa will be entitled to visit Australia or Israel for up to one year, and will also be eligible to engage in short-term work or study during their stay.

In the coming months, Australia and Israel will be working closely together to implement the necessary legal and administrative processes to bring this visa arrangement into effect.

This is the second country that signed the agreement with Israel – after New Zealand. Germany has also recently signed a similar agreement.

## **III THE YEAR IN REVIEW**

After a long period of internal discussions between several Israeli government authorities, in December 2015 the MOI issued new regulations for foreign experts, with immediate effect. The regulations distinguish between expert professions that require academic qualifications and those that do not by making the conditions related to non-academic professions stricter.

Between 2006 and 2014, over 64,000 asylum seekers and labour immigrants 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. As of October 2015, over 44,000 are still staying in Israel. Only few foreign nationals 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 had almost come to an end with the completion of a border fence between Israel and Egypt, a massive project that began in 2011, with a budget of 1.35 billion shekels. In addition, from 2012 to 2014 Israel built the world’s largest detention centre for asylum seekers. The facility, named ‘Holor’, was built on 250 acres of the Negev sand dunes at the Ketziot prison and is currently fully 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 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 impose harsher penalties on employers and other persons who assist unauthorised foreign workers in Israel. To that end, the new measures also grant PIBA 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 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* submission of a work permit application with the Working Permit Unit operated by the MOI;
- b* subsequent filing of a 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 arriving 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 Working Permit Unit will issue a B-1 recommendation letter to the MOI.

*Second and third steps: visa application and consular processing*

Upon issuance of the Working Permit 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 using the short-term single entry visa will cancel the B-1 visa obtained by the applicant at the consulate, and the visa will require reprocessing at the consulate.

*New regulation for experts*

In December 2015 the MOI issued new regulations for foreign experts, with immediate effect. The regulations distinguish between expert professions that require academic qualifications (e.g., engineers for research and development teams, auditors, senior executives, and other senior supervisors), and those that do not (e.g., a welder, mechanical installer, equipment installer, and any other job that does not require a certificate of education as a precondition for an academic institution of higher education).

For those professions that do not require an academic education, the conditions have become stricter, and the employer will have to undertake and execute additional obligations (e.g., open a local Israeli bank account for the employee for the transfer of his or her salaries and deposit a large amount of money to guarantee the individual's departure from Israel at the end of their employment).

Although the regulations distinguish between expert professions that require academic qualifications and professions that do not require higher education, *de facto* the distinction is between experts who hold an academic degree to those who do not, regardless of whether an academic degree is actually needed for the specific position.

*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 benefit from 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.

Under the new regulation, for STEP process, dependants will not be allowed to stay in Israel.

### *Two-year work permit*

As of February 2014, Israel's MOI is accepting two-year work permit applications, while continuing to issue the standard three-month and one-year work permits. The application process for the two-year permit is expected to be more rigorous, as the need for the longer validity period must be supported by assignment-related documentation and information.

The B-1 work visa issued in conjunction with the work permit will continue to be valid for one year and may be renewed in Israel after the first year.

The two-year work permit provides more flexibility to foreign nationals on long-term assignments. However, employers must substantiate the need for the longer duration.

### *Forty five-days work authorisation (SEA) programme*

In 2015 the MOI issued a new fast track for a permit to work in Israel, which allows, within days, the arrival of a foreign expert for a short period (defined and limited) and does not exceed 45 days per calendar year in total. This procedure replaced a previous procedure that enabled work for up to 30 days in Israel (SEA).

This route resolves a known issue, especially for companies that provide technical services such as installation of machines and repair. It allows an immediate solution for the installation of systems and for sudden issues that arise, as opposed to the process of obtaining a visa for longer periods, which takes about three to four months to obtain.

A limited number of documents and declarations must be provided to the MOI, together with the employee's documentation proving the expert's competence and suitability to perform the job. As a result, it is possible to file the request relatively quickly, and to obtain the work permit within six to eight business days.

Upon receipt of the work permit, the foreign national can enter Israel and begin to work immediately, without having to obtain a visa from the Israeli consulate in their home country, as required for most other types of work visas. Within two days of arrival in Israel, the individual is required to deliver their passport to the MOI for the purpose of completing the procedure of obtaining a work visa. Without this completion – the expert's work in Israel would be illegal.

### *Foreign journalist work visa*

To be allowed to work legally, foreign journalists can enter Israel as a tourist and apply for a temporary journalist card from the Israeli Government Press Office (GPO), and later apply for a B-1 work visa from the MOI. The duration of process takes two to three weeks from entry.

### *Scientist B-1 work visa*

In 2015 the MOI established a procedure for foreign lectures or researchers who hold a master's degree and wish to work in a recognised institution of higher education in Israel. In this category, the foreign scientist is required, as a prerequisite for submitting an application, to present a recommendation letter from the Israeli university in question.

The visa processing is similar to that of the regular B-1 work visa; however, there are some differences regarding the B-1 research visa requirements, which are as follows:

- a* the processing time for work permit applications is 10 days; and
- b* there is no prevailing wage requirement.

*Family members of foreign experts (for one/two-year visas)*

Generally, the MOI does not grant family members of migrant workers permission to enter and stay in Israel; however, in some cases, the MOI will make an exception to this policy for foreign experts and their families. Only dependents of experts under the 'higher education' category are eligible to bring their dependents. The spouse (either married or not) and children up to 18 years old (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. 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**

PIBA 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 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 is not in the public domain);
- 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.<sup>5</sup>

## V INVESTORS, SKILLED MIGRANTS AND ENTREPRENEURS

A new visa programme – the ‘innovation visa’ programme – is intended to encourage and support foreign entrepreneurs who wish to establish an innovative project in Israel. First published at the end of 2015, this unique programme has been developed through the combined efforts of the Ministry of Economy, the Ministry of Foreign Affairs and PIBA, with the aim of supporting new technology ventures which will strengthen Israel's position as a global centre of innovation.

The programme has been initiated as an experimental procedure, whereby foreign entrepreneurs who wish to establish and develop technological ventures in Israel will be able to apply for an entry and residence permit.

The Office of the Chief Scientist of the Ministry of Economy, the government office for support of industrial research and development, will review applications and recommend eligible individuals. Once recognised as a foreign entrepreneur, the Chief Scientist will issue a recommendation to the MOI. Application for the B-2 innovation visa can then be submitted to the MOI.

According to the procedure, the MOI will review the application within 14 days. Approval will allow individuals from waiver countries immediate travel to Israel, while travellers from non-waiver countries will have to obtain their visa at the Israeli consulate prior to entry. Once in Israel, the visa holder must approach the MOI within 30 days for visa issuance.

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5 It is important to note that recent decisions of the labour courts and regular courts on the subject of confidentiality and non-competence 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.

The B-2 innovation visa will be granted for a period of one year, and can be extended for up to a maximum of 27 months. The B-2 visa category is a business visa, and does not allow the holder to work in Israel or to receive a salary from any individuals or companies in Israel.

Following a certain period of stay under the innovation visa, an application for a B-1 expert visa can be submitted to allow the individual to work in Israel.

## **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 for companies, deportation of employees, and imprisonment and fines for 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.

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Tsvi Kan-Tor is the managing partner of Kan-Tor & Acco in Ramat Gan, Israel. He 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**

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Amit Acco is a founding partner of Kan-Tor & Acco in Ramat Gan, Israel. He 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, which 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 in London.

**YOAV NOY**

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Yoav Noy is a partner with Kan-Tor & Acco in Ramat Gan, Israel. Practising immigration and nationality law since 2005, Mr Noy is a senior client manager in the firm's Israeli immigration law department. Representing all business sectors in supporting work permits, visa applications and related issues.

Mr Noy holds an LLB degree from the College of Management Academic Studies Faculty of Law in Israel, and a master of business administration (MBA) degree, specialising in capital markets and corporate governance from the Business School of the College of Management Academic Studies.

His expertise focuses on corporate relocation of foreign experts to Israel, offering leading Israeli and multinational companies and investors, case-specific legal advice and adaptive solutions to ensure compliance with the immigration regulations of Israel, and provides legal advice on these matters to all parts of the business sector from leading multinational organisations to private individuals.

Mr Noy has written articles on the legal and practical aspects of Israeli immigration law, which have been published by the Israeli Bar Association as well as other official legal resources in Israel and worldwide. He has served as a speaker and moderator at several international conferences, lecturing on a wide variety of topics relating to immigration to Israel.

He is a member of the committee of foreign workers of the Israel Bar Association, as well as vice president of the labour committee (immigration) and national representative of Israel at the International Association of Young Lawyers (AIJA).

Additionally, Mr Noy is a member of the Israel–Ireland Chamber of Commerce, taking part in the audit committee, and president of the Immigration Sub-committee.